

## STATE OF SOUTH CAROLINA

## (Caption of Case)

Petition for Approval of Nextel South Corp. and  
Petition for Approval of NPCR, Inc. d/b/a Nextel  
Partners'

Adoption of the Interconnection Agreement Between  
Sprint Communications Company L.P., Sprint  
Spectrum L.P. d/b/a Sprint PCS And BellSouth  
Telecommunications, Inc. d/b/a AT&T South  
Carolina d/b/a AT&T Southeast

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

## COVER SHEET

DOCKET  
NUMBER: 2007 - 255 - C  
and  
2007-256-C

(Please type or print)

Submitted by: John J. Pringle, Jr.

SC Bar Number: 11208

Telephone: 803-343-1270

Fax: 803-799-8479

Other:

Address: Ellis, Lawhorne &amp; Sims, PA

PO Box 2285

Columbia SC 29202

Email: jpringle@ellislawhorne.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

## DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition☐ Request for item to be placed on Commission's Agenda expeditiously☐ Other:

## INDUSTRY (Check one)

- ☐ Electric  
☐ Electric/Gas  
☐ Electric/Telecommunications  
☐ Electric/Water  
☐ Electric/Water/Telecom.  
☐ Electric/Water/Sewer  
☐ Gas  
☐ Railroad  
☐ Sewer  
☒ Telecommunications  
☐ Transportation  
☐ Water  
☐ Water/Sewer  
☐ Administrative Matter  
☐ Other: \_\_\_\_\_

## NATURE OF ACTION (Check all that apply)

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Affidavit                 | <input checked="" type="checkbox"/> Letter                 | <input type="checkbox"/> Request                   |
| <input type="checkbox"/> Agreement                 | <input type="checkbox"/> Memorandum                        | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Answer                    | <input type="checkbox"/> Motion                            | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Appellate Review          | <input type="checkbox"/> Objection                         | <input type="checkbox"/> Resale Agreement          |
| <input type="checkbox"/> Application               | <input type="checkbox"/> Petition                          | <input type="checkbox"/> Resale Amendment          |
| <input type="checkbox"/> Brief                     | <input type="checkbox"/> Petition for Reconsideration      | <input type="checkbox"/> Reservation Letter        |
| <input type="checkbox"/> Certificate               | <input type="checkbox"/> Petition for Rulemaking           | <input type="checkbox"/> Response                  |
| <input type="checkbox"/> Comments                  | <input type="checkbox"/> Petition for Rule to Show Cause   | <input type="checkbox"/> Response to Discovery     |
| <input type="checkbox"/> Complaint                 | <input type="checkbox"/> Petition to Intervene             | <input type="checkbox"/> Return to Petition        |
| <input type="checkbox"/> Consent Order             | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation               |
| <input type="checkbox"/> Discovery                 | <input type="checkbox"/> Prefiled Testimony                | <input type="checkbox"/> Subpoena                  |
| <input type="checkbox"/> Exhibit                   | <input type="checkbox"/> Promotion                         | <input type="checkbox"/> Tariff                    |
| <input type="checkbox"/> Expedited Consideration   | <input type="checkbox"/> Proposed Order                    | <input type="checkbox"/> Other: _____              |
| <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest                           |  |
| <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit             |  |
| <input type="checkbox"/> Late-Filed Exhibit        | <input type="checkbox"/> Report                            |  |

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# ELLIS:LAWHORNE

John J. Pringle, Jr.  
Direct dial: 803/343-1270  
[jpringle@ellislawhorne.com](mailto:jpringle@ellislawhorne.com)

May 27, 2008

## **FILED ELECTRONICALLY**

The Honorable Charles L.A. Terreni  
Chief Clerk  
**South Carolina Public Service Commission**  
Post Office Drawer 11649  
Columbia, South Carolina 29211

RE: Petition for Approval of Nextel South Corporation's Adoption of the  
Interconnection Agreement between Sprint and AT&T, **Docket No. 2007-255-C**

Petition for Approval of NPCR, Inc. d/b/a Nextel Partners' Adoption of the  
Interconnection Agreement between Sprint and AT&T, **Docket No. 2007-256-C**

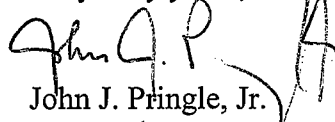
Dear Mr. Terreni:

On behalf of Nextel, I would like to provide the following supplemental authority in support of Nextel's pending requests for adoption, and request that the Commission consider same in ruling on these Dockets.

On May 19, 2008, the Tennessee Regulatory Authority ("TRA") approved Nextel's adoption of the AT&T/Sprint agreement. A copy of the TRA agenda conference transcript is attached hereto as **Exhibit A**, and the discussion and vote can be found on Pages 5-7 thereof. On May 20, 2008, the Georgia Public Service Commission ("GPSC") adopted the GPSC Staff's recommendation and approved Nextel's adoption request. A copy of the GPSC administrative session transcript is attached hereto as **Exhibit B**, and the discussion and vote can be found on Pages 17-18 thereof. The GPSC Staff Recommendation is attached hereto as **Exhibit C**.

By copy of this letter, I am serving all parties of record and I enclose my Certificate of Service to that effect.

Very truly yours,

  
John J. Pringle, Jr.

JJP

cc: William R. Atkinson, Esquire (via electronic mail service)  
Mr. Joe M. Chiarelli (via electronic mail service)

Enclosures

# TRA Conference (complete), 5/19/08

BEFORE THE TENNESSEE REGULATORY AUTHORITY

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## TRANSCRIPT OF AUTHORITY CONFERENCE

Monday, May 19, 2008

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### APPEARANCES:

For TRA Staff:	Ms. Sharla Dillon Mr. Charles Pemberton Mr. Larry Borum
For the Consumer Advocate:	Mr. Timothy Phillips Mr. Ryan McGeehee
For Atmos:	Mr. Scott Ross
For Sprint Spectrum:	Mr. Melvin Malone
For AT&T:	Mr. Guy Hicks

Reported By:  
Christina M. Rhodes, RPR, CCR

# TRA Conference (complete), 5/19/08

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3	SECTION 1 - AUTHORITY BUSINESS	
4	(None)	
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6	SECTION 2 - HARGETT, KYLE, AND ROBERSON	
7	07-00161 Approved 3-0	5
8	07-00251 Deferred to next agenda in June	7
9	08-00053 Approved 3-0	30
10	08-00073 Approved 3-0	31
11	(Miscellaneous Business - None)	
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13	SECTION 3 - HARGETT, JONES, AND KYLE	
14	08-00055 Approved 3-0	31
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16	08-00076 Approved 2-1 (Kyle dissenting)	37
17	08-00071 Approved 3-0	47
18	08-00032 Approved 3-0	48
19	(Miscellaneous Business - None)	
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21	SECTION 4 - JONES, KYLE, AND ROBERSON	
22	07-00224 Denied 3-0	48
23	07-00266 Approved 3-0	51
24	08-00051 Approved 3-0	52
25	(Miscellaneous Business - None)	

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(The aforementioned Authority conference came on to be heard on Monday, May 19, 2008, beginning at approximately 1:00 p.m., before Chairman Eddie Roberson, Director Sara Kyle, Director Ron Jones, and Director Tre Hargett, when the following proceedings were had, to-wit:)

CHAIRMAN ROBERSON: Welcome to the May 19th, 2008 Authority conference, and I believe that Director Kyle is joining us by telephone.

Are you there, Director Kyle?

DIRECTOR KYLE: Yes, I am. Thank you, Dr. Roberson.

CHAIRMAN ROBERSON: Great. Thank you. Do we have anybody joining us by phone today, Madam Clerk?

MS. DILLON: We do. Chairman, Directors, we have Hitesh Patadia with Gas Technology Institute.

Section 1, Authority business.

CHAIRMAN ROBERSON: None.

DIRECTOR KYLE: None.

MS. DILLON: Miscellaneous business?

DIRECTOR KYLE: None.

MS. DILLON: Section 2, Directors

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4	SECTION 5 - HARGETT, JONES, AND ROBERSON	
5	08-00054 Approved 3-0	54
6	08-00072 Approved 3-0	55
7	07-00249 Approved 2-1 (Jones abstained)	55
8	(Miscellaneous Business - None)	
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Hargett, Kyle, and Roberson.

Docket No. 07-00161, Sprint Nextel Corporation; petition regarding notice of election of interconnection agreement by Nextel South Corp.; consider motion for summary judgment.

CHAIRMAN ROBERSON: I have a motion unless any of my panel want to put forward one.

DIRECTOR KYLE: No.

CHAIRMAN ROBERSON: The hearing officer's schedule for briefing of the additional issues did not provide for oral arguments but states that the parties should be available for questions, if any, from the panel.

So do my fellow directors have any questions for the parties before we deliberate?

DIRECTOR KYLE: No.

DIRECTOR HARGETT: None.

CHAIRMAN ROBERSON: I have a motion then. After review of the briefs and the record, I find that to adopt an entire agreement, a carrier does not have to avail nor have the legal right to utilize the entire agreement so long as the services and products purchased by the adopting party use the same rates, terms, and conditions as those contained in the adopted agreement. The prohibition in Rule 51-809

2 (Pages 2 to 5)

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1 against limiting adoptions based on class of customer  
2 and type of service clearly indicates to me that a  
3 carrier does not have to be technically capable of  
4 using all the provisions in an agreement to adopt the  
5 entire agreement.  
6 Further, I find that the express terms  
7 of the Sprint interconnection agreement allows both the  
8 use of selected portions and stand-alone use by a  
9 wireless carrier. Therefore, I have concluded that  
10 Nextel is entitled to summary judgment as a matter of  
11 law.  
12 Now, based upon these findings as well  
13 as the findings of the panel made at the April 21st  
14 Authority conference, I move to grant Nextel's motion  
15 for summary judgment and approve Nextel's adoption of  
16 the Sprint interconnection agreement effective today.  
17 I would further move to direct the counsel for Nextel  
18 to submit a draft order to our general counsel as soon  
19 as possible, and I so move.  
20 DIRECTOR KYLE: Yes. I second and  
21 vote yes.  
22 DIRECTOR HARGETT: I'm going to vote  
23 yes as well, Director -- Chairman Roberson. If I could  
24 offer a couple more things. I didn't hear you mention  
25 this. I want to just for the record say a couple of

1 things.  
2 I determined there were no general  
3 issues of material fact in dispute. I do, however,  
4 have some lingering concerns that my agreement with the  
5 decision we made last time was based on a record that  
6 was not as fully developed as I would have liked.  
7 And also I did not hear you mention  
8 the Alltel interconnection agreement. Did you mention  
9 that in your motion?  
10 CHAIRMAN ROBERSON: No, I didn't.  
11 DIRECTOR HARGETT: In reviewing AT&T's  
12 current practices for the Alltel interconnection  
13 agreement, Docket 04-00311, I was also unable from the  
14 record to distinguish any differences with that instant  
15 docket and the docket relative to the issues presented  
16 before us. I vote yes.  
17 CHAIRMAN ROBERSON: Okay. The vote is  
18 3-0. Next matter.  
19 MS. DILLON: Next we have Docket  
20 No. 07-00251, Atmos Energy Corporation; petition of  
21 Atmos Energy Corporation for a waiver to permit the  
22 limited use of polyethylene piping; hear and consider  
23 petition.  
24 CHAIRMAN ROBERSON: The instant  
25 petition was filed on November the 13th, 2007 and

1 amended on March the 25th, 2008. This hearing was duly  
2 noticed by the Authority on April the 30th, 2008 and  
3 was legally noticed through publication by the company.  
4 I will ask the company to please come  
5 forward and introduce themselves for the record and  
6 also Mr. Borum if he would also come forward. Please  
7 identify yourself for the record.  
8 MR. BORUM: I'm Larry Borum with the  
9 Gas Pipeline Safety Division.  
10 MR. ROSS: Scott Ross for Atmos  
11 Energy, and with me is Ernie Napier who is vice  
12 president of technical services for the mid states  
13 division of Atmos.  
14 CHAIRMAN ROBERSON: Okay. Let me  
15 ask -- before I swear in the witness, let me ask  
16 counsel, do you have any objections for the panel  
17 asking questions of Mr. Borum and also from  
18 Mr. Patadia?  
19 MR. ROSS: No objections.  
20 CHAIRMAN ROBERSON: You don't want us  
21 to swear them in or anything like that?  
22 MR. ROSS: No, not at all.  
23 CHAIRMAN ROBERSON: Mr. Napier, if you  
24 raise your right hand.  
25 (Witness sworn.)

1 CHAIRMAN ROBERSON: You may proceed,  
2 Mr. Ramsey -- Mr. Ross. I'm sorry. Mr. Ross.  
3 MR. ROSS: Mr. Napier, you provided --  
4 well, first of all, you are the vice president  
5 technical services for Atmos Energy's Kentucky mid  
6 states division; correct?  
7 MR. NAPIER: That is correct.  
8 MR. ROSS: And you provided some  
9 prefled testimony in this matter?  
10 MR. NAPIER: Yes, sir.  
11 MR. ROSS: Do you wish to make any  
12 changes or revisions to that prefled testimony?  
13 MR. NAPIER: No, sir.  
14 MR. ROSS: Do you adopt that testimony  
15 as your testimony here today?  
16 MR. NAPIER: Yes, sir.  
17 MR. ROSS: Would you please summarize  
18 briefly the substance of your testimony for the  
19 directors?  
20 MR. NAPIER: Surely. First, I would  
21 like to say thank you for allowing me to speak today.  
22 Atmos Energy is requesting a waiver of Part 192 to  
23 change the design factor for a limited amount of  
24 polyethylene pipe, to the change design factor from .32  
25 to .40. Plastic pipe technology has greatly changed

1 over about the past 10 or 12 years, and what we want to  
2 do is leverage that technology to the industry's  
3 benefit and to our customers' benefit.

4 The design factor change will allow us  
5 a couple of option, the first one to be to operate at a  
6 slightly higher pressure. Another option would be to  
7 operate with a thinner wall thickness on some of the  
8 pipelines and, therefore, decrease our purchase of  
9 polyethylene materials which eventually would turn into  
10 a savings for our ratepayers.

11 There has been a waiver granted  
12 previously by the TRA to Nashville Gas Company. I'm  
13 not sure what date it was, but related to a polyamide  
14 situation which was very similar to what we're talking  
15 about today.

16 MR. ROSS: Is what you're requesting  
17 essentially a trial or experimental period?

18 MR. NAPIER: Yes, sir, it is. I've  
19 had discussions with Mr. Borum and what we agreed to is  
20 up to 5 miles we're going to put it in in probably  
21 multiple locations. Mr. Borum has asked for some  
22 consideration on our part to install special equipment  
23 to monitor the pressure on the pipelines, put up  
24 additional line markers, do extra lead surveys. We're  
25 certainly amenable to all those things that he has

1 asked.

2 MR. ROSS: Would this change affect  
3 the safety of the gas pipeline?

4 MR. NAPIER: No, absolutely not. Like  
5 I said, we're trying to leverage the technology with  
6 plastic materials which has greatly changed over the  
7 past 10 or 15 years.

8 MR. ROSS: How does the real world  
9 experience of this polyethylene gas pipeline compared  
10 to, say, bare steel that we've seen used in the past?

11 MR. NAPIER: Well, bare steel has a  
12 tendency to corrode because it's not protected from  
13 corrosion. Plastic materials do not corrode. We're  
14 seeing life cycles at this point in time of very long  
15 periods.

16 MR. ROSS: In a matter of decades?

17 MR. NAPIER: Yes, decades.

18 MR. ROSS: Have you had discussions  
19 with agency staff about these requested changes?

20 MR. NAPIER: Yes, I have discussed  
21 this matter with Mr. Borum on several occasions.

22 MR. ROSS: And has the staff requested  
23 that Atmos do certain things to monitor the performance  
24 of this new pipeline?

25 MR. NAPIER: Yes, they have, and we

1 intend to walk hand in hand with them as we go through  
2 this process and have them involved in the  
3 installation -- monitoring the installation. They've  
4 asked us to provide for excavation of material at year  
5 two and at year seven, I believe. They've asked us to  
6 install pressure monitoring equipment on these sections  
7 of pipeline; we've agreed to do that.

8 MR. ROSS: Is there research that  
9 backs up this request and design change?

10 MR. NAPIER: Absolutely. The Gas  
11 Technology Institute has been studying this material  
12 for many years and what we're hearing from them is that  
13 the pressure that they're going to be -- we're going to  
14 be operating in is about half of what they've tested at  
15 over the time period. So, in other words, if we're  
16 operating at 90 pounds, they've been testing this  
17 material at maybe 180 pounds for the same design, and  
18 they're not seeing any degradation in the material over  
19 the lifespans they've tested.

20 MR. ROSS: We filed a study with the  
21 petition, and the author of that study, Mr. Patadia --  
22 the engineering study, is actually on the phone for  
23 questions if there are any. I would open it up to the  
24 panel at this point.

25 CHAIRMAN ROBERSON: Did you want to

1 make his prefiled part of the record?

2 MR. ROSS: Yes, I would like to  
3 formally move the introduction of his prefiled  
4 testimony. Thank you.

5 CHAIRMAN ROBERSON: It will be done  
6 without objection.

7 Questions for the company witness?

8 DIRECTOR KYLE: None.

9 DIRECTOR HARGETT: None.

10 CHAIRMAN ROBERSON: I have a couple  
11 questions. I believe that this black pipe or this pipe  
12 has been in use in Canada for a number of years, maybe  
13 as far back as the mid-90s. So is the safety record of  
14 that pipe in Canada -- has it been satisfactory? Are  
15 you familiar with that?

16 MR. NAPIER: No, sir, I'm not.

17 CHAIRMAN ROBERSON: Okay. Explain to  
18 me a little bit why the company is doing this? I mean,  
19 is this more expensive pipe than you would  
20 traditionally put in of the lower load factor? Is it  
21 more expensive? Is it cheaper?

22 MR. NAPIER: Actually, the prices are  
23 going to be comparable to what we're currently using.  
24 The real advantage is twofold. Number one, we can  
25 operate with this change in design factor at a higher

1 pressure. That eventually will enable us to install  
2 smaller diameter pipelines. That in itself is a  
3 significant savings.

4 The other option would be operate a  
5 pipeline with a slightly smaller wall thickness. There  
6 again, a reduction in the cost of polyethylene. Those  
7 costs get passed on to the customer base.

8 CHAIRMAN ROBERSON: Are you familiar  
9 with the last rate case that the Authority ruled in  
10 this -- with Atmos granted? Are you familiar with  
11 that?

12 MR. NAPIER: Vaguely.

13 CHAIRMAN ROBERSON: Okay. The  
14 Authority allowed the company to earn based on so many  
15 feet of replacement of bare cast steel pipes.

16 MR. NAPIER: That's correct.

17 CHAIRMAN ROBERSON: So is the cost of  
18 the pipes that we're -- that you're seeking in the  
19 waiver, is it comparable to the cost figures that were  
20 included in the rate case for the replacement or do you  
21 know?

22 MR. NAPIER: I'm not sure I understand  
23 the question, Chairman.

24 CHAIRMAN ROBERSON: Okay. The  
25 Authority allowed the company to recover I think it was

1 45,000 feet of replacement of bare cast steel pipes a  
2 year. And what I'm wondering is, is the cost that was  
3 included in the rate case similar to the cost of the  
4 black pipe that the company is seeking to put in under  
5 the waiver?

6 MR. NAPIER: They would be similar  
7 materials. There's actually three polyethylenes that  
8 are in this study. We don't currently use black pipe  
9 in Tennessee. All of our pipe is the medium density  
10 polyethylene, but the cost would be similar to what  
11 we're seeing on the bare steel replacement.

12 CHAIRMAN ROBERSON: Okay. One last  
13 question, I believe. With the higher amount of volume  
14 that this pipe can accommodate, would that provide the  
15 company a better opportunity for line packing of gas --  
16 the commodity of gas for storage?

17 MR. NAPIER: Line packing and  
18 distribution system is almost a myth.

19 CHAIRMAN ROBERSON: Okay. So your  
20 answer is no, it wouldn't?

21 MR. NAPIER: That's correct.

22 CHAIRMAN ROBERSON: Okay. That's all  
23 the questions that I have.

24 Mr. Borum -- well, let me -- are you  
25 through, Mr. Ross, with your witness?

1 MR. ROSS: I'm through, yes.

2 CHAIRMAN ROBERSON: Okay. Mr. Borum  
3 has filed an affidavit in the docket. He is not an  
4 actual party to the docket, but he might have some  
5 information that would be useful to the directors.

6 Mr. Borum, would you like to address  
7 this issue, please?

8 MR. BORUM: Yes, sir. We've reviewed  
9 the technical report that goes back several years on  
10 this type pipe and relative to the increase in design  
11 factor. Also we had asked for three additional  
12 conditions if this is approved. One condition is  
13 the -- if the project -- if the design factor is --  
14 test is terminated, then the pipe would remain in the  
15 ground but the pressure or the method of operating  
16 pressure would possibly change depending on what we  
17 decided along with a committee that was set up to study  
18 this test.

19 That would give us a little leeway.  
20 In case the outcome is not what we think that it will  
21 be, then we'll have an opportunity to address the pipe  
22 that's in the ground so it doesn't become a safety  
23 issue.

24 The second condition we put in --  
25 Ernest mentioned it -- is to -- once the pipe is

1 installed, after a two-year period, we will dig up at  
2 two different locations a 40-foot section of pipe to be  
3 sent off to the testing lab and examined to make sure  
4 that the pipe is -- the condition is still what is  
5 expected, and this will be done in two and seven years.

6 And also I think the Gas Technology  
7 Institute or the joint steering committee is  
8 considering digging a section up in three years. The  
9 pressure gauges -- we also have requested that they  
10 have pressure gauges at two sites if we're going to  
11 extract a sample just to make sure that we know what  
12 pressure that pipe was operating under during that  
13 time, that we have some record that it was operating at  
14 the slightly elevated pressure so we get an honest to  
15 goodness test. And I will try to answer any questions.

16 CHAIRMAN ROBERSON: In condition two  
17 you state that the company has to report -- file  
18 reports of the testing or make them available to the  
19 TRA.

20 MR. BORUM: Yes, sir, that's correct.

21 CHAIRMAN ROBERSON: So will the staff  
22 just request those reports or is the company mandated  
23 to provide you a copy of those when they are conducted?

24 MR. BORUM: Well, we expect to get  
25 copies when those tests are put out and the joint

1 steering committee also will participate in the  
2 testing. And they will also -- we can get reports from  
3 them if we need to. So we expect them to be available,  
4 let's put it that way, for us to review.  
5 CHAIRMAN ROBERSON: Mr. Ross, you and  
6 your witness are excused. Thank you.  
7 MR. ROSS: Thank you.  
8 CHAIRMAN ROBERSON: Because this is a  
9 public hearing, I will ask if there are any members of  
10 the public that would like to make a comment at this  
11 time. Please come forward and, if you would, sit at  
12 the mike and give us your name and address for the  
13 record, please.  
14 MR. WHETSTONE: Mr. Chairman, I'm Paul  
15 Whetstone. That's W-H-E-T-S-T-O-N-E. I live at 427  
16 East Fourth North Street, Morristown, Tennessee, 37814.  
17 I have lived at that address some 15 years  
18 continuously.  
19 I would first urge you to look through  
20 a very skeptical lens when it comes to anything that  
21 Mr. Napier has said through counsel. I have fought  
22 with Atmos Energy for over a decade to have a  
23 significant gas leak fixed which is adjacent to my  
24 home. Over a decade.  
25 The only thing that has ever occurred

1 is after that decade had elapsed Atmos Energy did come  
2 out and dug up the sidewalk, dug up part of the  
3 driveway which adjoins my neighbor, and so-called fixed  
4 the problem which is now worse than it ever was.  
5 Atmos Energy is not accountable to its  
6 customers, and when Mr. Napier says this is all in an  
7 effort -- which I have to keep from grinning -- to save  
8 the customers money, that is just not true. What this  
9 is is an effort on behalf of Atmos Energy to have  
10 greater shareholder profit at the expense of the safety  
11 of people like me, my wife, and my five-year-old son  
12 who have to live next to a significant gas leak every  
13 day of our lives. The only respite that we ever get is  
14 when a high pressure center moves in and it actually  
15 works to keep the gas in the ground; otherwise, there's  
16 a constant odor of gas which permeates the interior of  
17 our home which is coming up on about a hundred years  
18 old.  
19 My next-door neighbors, a Murrell and  
20 Joan Weesner -- he's a graduate of Duke University.  
21 She too is a school teacher. He taught at the  
22 Morristown Hamlin High School East until he retired.  
23 They are in their 80s. I'm going to read a letter,  
24 which I want to make an exhibit to my testimony.  
25 It says, "May 19, 2008, To whom it may

1 concern. We have been a resident at 433 East Fourth  
2 North Street in Morristown, Tennessee, and customer of  
3 Atmos Energy and its predecessors for the natural gas  
4 for 44 years, as were my father and grandparents before  
5 me in the same dwelling.  
6 "The delivery and service have been  
7 quite satisfactory during the period. We have,  
8 however, detected many leaks in the supply lines  
9 nearby. The many repairs have seemingly never  
10 completely solved the problem. It was therefore with  
11 great expectation that we learned that the old pipeline  
12 was being replaced.  
13 "Our concern, however, is what effect  
14 the company's request for changes in materials  
15 specifications may have on the installation of the new  
16 supply lines in our neighborhood, now classified as a  
17 'historic district'.  
18 And I would like to make that the next  
19 exhibit, please, if I may. I'll leave it on the table.  
20 CHAIRMAN ROBERSON: Just give that to  
21 one of our attorneys and we'll see that that's included  
22 in the docket.  
23 MR. WHETSTONE: I have just today  
24 reviewed the petition. Incidentally, this notice was  
25 buried on the last page of Sunday sports and,

1 fortunately, my wife pointed it out to me, Atmos Energy  
2 being a concern of mine for in excess of a decade. And  
3 I drove from Morristown, Tennessee, here this morning  
4 to be here. I work, like all of us do, but I took time  
5 out because this is a very, very significant issue.  
6 In the report or in the petition --  
7 which I would note Mr. Napier says that this is his  
8 petition. This is a lawyer-drawn petition that he has  
9 signed in front of a notary. That's all it is.  
10 Remember that. This is nothing more than you get on a  
11 motion for summary judgment where a lawyer has simply  
12 had his client sign it before a notary. These are  
13 lawyer words here, folks.  
14 With that said, it talks about  
15 experimenting on a trial basis in various locations.  
16 Now, this pipeline might be the greatest thing since  
17 sliced bread, but I doubt it. What this is about is  
18 actually decreasing the gauge of the pipe that will  
19 ultimately supply natural gas to my family, to the  
20 Weesners next door, to the Rhymers next door, to the  
21 family across the street that has children. This is a  
22 residential neighborhood that does not need safety  
23 subordinated to shareholder profit.  
24 It is an experimentation that I think  
25 is not in the best interest of those who use these



1 services. I'm not here to talk about exorbitant gas  
2 prices, which they are. They are very high. I don't  
3 see how poor families make it on these prices. I'm not  
4 here to talk about that today. Perhaps another day I  
5 will, but what I am here to talk about is one word and  
6 that is safety.

7 The second factor that Mr. Napier has  
8 said -- and, incidentally, I find it very, very telling  
9 that he does not know the safety record of Canada. Let  
10 me tell you something. These guys have high-powered  
11 lawyers with them today, and if there was a good safety  
12 record you would know about it. If there is a bad  
13 safety record in the country of Canada, guess what?  
14 They don't know about it.

15 This is all designed to decrease the  
16 thickness of the pipe. I think probably to do away  
17 eventually with metal piping in addition to the  
18 polyethylene piping. I would urge you to do this. I  
19 know that there's an expert -- a so-called expert that  
20 has been paid probably good money to talk to you folks  
21 and to say exactly what this lawyer wants him to say  
22 for his client. What this case is about is saving  
23 money, shareholder profit -- that's it -- at the  
24 expense of safety.

25 Atmos Energy came to Morristown,

1 Tennessee, years ago and put on a campaign that this  
2 does not need to be within the purview of Morristown  
3 Utility System, this needs to be privatized. There are  
4 a lot of people in Upper East Tennessee that have never  
5 forgiven President Roosevelt for creating the Douglas  
6 Dam and flooding Jefferson County. And there's a lot  
7 of very conservative people who happen to think -- and  
8 they're misguided -- that privatization works. It does  
9 not work in this example.

10 I have called Atmos Energy no less  
11 than 15 times to fix this leak and it has never been  
12 fixed. The same guy comes out. He's an hourly  
13 wageworker. He's a nice guy. I'm smart enough not to  
14 vent on him. And he comes out with his device, and he  
15 measures, and the thing goes haywire and it starts  
16 clicking and there's gas coming out everywhere, and  
17 nothing gets done, nothing.

18 And when you call that emergency  
19 number, which I've almost got memorized as to the  
20 message, they will tell you to turn off all appliances  
21 and get away. It's going to result in a news-making  
22 event unless something is done about Atmos Energy in  
23 Morristown, Tennessee.

24 I have to believe that this company is  
25 probably looking at this as possible long-term

1 liability rather than the present safety of somebody  
2 like me, my five-year-old son, my elderly neighbors,  
3 and the neighbors across the street from me, and the  
4 church that is up on the corner. It is unacceptable  
5 and I have never been able to get anything done about  
6 it.

7 So I would ask this board to look at  
8 anything Atmos Energy does with a very, very skeptical  
9 lens.

10 CHAIRMAN ROBERSON: Questions for the  
11 public witness?

12 DIRECTOR HARGETT: I don't have any.

13 CHAIRMAN ROBERSON: Director Kyle, do  
14 have you have any questions?

15 DIRECTOR KYLE: I don't have a  
16 question, but I have a comment. I understand we have  
17 procedures for handling complaints but I would either  
18 like a few minutes to talk to staff or put this case  
19 off until another conference and this complaint -- this  
20 safety hazard has been handled and completed before we  
21 move forward.

22 CHAIRMAN ROBERSON: I think that's a  
23 good suggestion. Mr. Borum, as being a member of this  
24 staff, will you work with the company to get the  
25 Authority a response on this soon?

1 MR. BORUM: Yes, sir.

2 CHAIRMAN ROBERSON: Before the next  
3 conference. And work with the company to make sure  
4 that this leak that's been explained is addressed.

5 MR. WHETSTONE: Plural. These are  
6 myriad leaks in a neighborhood that has houses in  
7 excess of a hundred years old. The leaks span from  
8 First North all the way up the old Knoxville College on  
9 Sixth, and they had to shut down a city block I think  
10 it was last year because of a gas leak in Morristown.  
11 We are talking about many, many leaks. I just happen  
12 to live next door to one within a few feet. It greets  
13 me every morning when I leave to go to work.

14 CHAIRMAN ROBERSON: And please tell  
15 your neighbors that are having these leaks that they  
16 can contact our gas safety division at the Authority,  
17 and Mr. Borum will give you a card at the end of this  
18 hearing that we will assist the consumers in there.  
19 That's what we're here for.

20 MR. WHETSTONE: I thought you were  
21 here for that, and I appreciate that. I tell you what  
22 I would like to do is to get affidavits -- and these  
23 are real affidavits from real people who will talk  
24 about that -- their experience with these gas leaks  
25 from my neighborhood. I've got your docket number and

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1 know how to file those.  
 2 CHAIRMAN ROBERSON: Thank you.  
 3 Is Mr. -- is it PA-DIE-A?  
 4 MR. ROSS: PA-DEE-A.  
 5 CHAIRMAN ROBERSON: Is he on the  
 6 phone?  
 7 MR. ROSS: He is, it's my  
 8 understanding.  
 9 CHAIRMAN ROBERSON: Mr. Patadia?  
 10 MR. PATADIA: Yes.  
 11 CHAIRMAN ROBERSON: Can you respond to  
 12 some of the questions regarding the experience of other  
 13 nations or other states that have used this type of  
 14 pipe as far as the safety regulations?  
 15 And, first, please identify yourself  
 16 for the record and your title and your education.  
 17 MR. PATADIA: For the record, my name  
 18 Hitesh, H-I-T-E-S-H, last name Patadia, P-A-T-A-D-I-A.  
 19 I hold a master's in mechanical engineering from the  
 20 University of Illinois, and I've been the lead  
 21 principal investigator and program manager for the  
 22 Increase in Design Factor Program.  
 23 This program started in July of 2004  
 24 and has had input from all of the relevant  
 25 stakeholders, including gas utility companies,

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1 regulatory officials, and also pipe and resin  
 2 manufacturers. So I am both the lead technical  
 3 investigator and program manager.  
 4 Specifically to answer the question  
 5 with regards to international experience as it relates  
 6 to operating pressures, our neighbors to the north in  
 7 Canada since 1996 have allowed the use of a .4 design  
 8 factor, and the experience in Canada has been safe. In  
 9 fact, in Canada, unlike the United States, there is no  
 10 pressure limitations. The request that Atmos is  
 11 seeking continues to keep the maximum pressure  
 12 limitation at 125 pounds which is what the federal code  
 13 currently allows. In other countries there are no  
 14 pressure limitations.  
 15 So, overall, the experience, not just  
 16 with our neighbors in the north, using the similar  
 17 materials that Atmos intends to use has been positive.  
 18 International experience in Europe which operate under  
 19 the ISO, International Standards Organization,  
 20 specifications, they allow for design factors of up to  
 21 .5.  
 22 So we are the only country in the  
 23 entire world that uses a .32 design factor. And really  
 24 the intent of the design factor, as Mr. Napier talked  
 25 about, the potential savings and benefits to the

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1 consumers on a more broader sense, the key benefit is  
 2 to increase the overall capacity of the gas  
 3 distribution network and provide more service and  
 4 reliable service to customers which possibly could not  
 5 have had natural gas service given the cost competitive  
 6 nature of steel piping, etc.  
 7 So this is, again, a key element and  
 8 something to take a look at and follow up on on the  
 9 work that was done with the steel piping industry,  
 10 which also increased from 72 percent SMI-S to  
 11 80 percent SMI-S.  
 12 So overall the international  
 13 experience has been positive. The key element here is  
 14 to take advantage of the improvement of the material  
 15 performance for plastics and really just provide more  
 16 reliable and safe gas service.  
 17 CHAIRMAN ROBERSON: Thank you.  
 18 Mr. Borum, did you want to say  
 19 anything else?  
 20 MR. BORUM: No, sir. It's just like  
 21 Hitesh is saying. We understand this study has been  
 22 going on for three to four years, and we try to look at  
 23 all the information available, all the reports that we  
 24 can find.  
 25 CHAIRMAN ROBERSON: Okay. I think

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1 Director Kyle's motion or suggestion is a good one,  
 2 that we defer action on this till the next conference,  
 3 and at that conference, Mr. Borum, if you will be  
 4 prepared to give us a report on what you have found  
 5 regarding the customer service problems that were  
 6 mentioned.  
 7 So, Mr. Ross, we will put it back on  
 8 the agenda in June.  
 9 MR. ROSS: Thank you. I just wanted  
 10 to report that we did speak with Mr. Whetstone before  
 11 the hearing and had time to make at least one phone  
 12 call to figure out what was happening in his  
 13 neighborhood. Apparently, the company was already in  
 14 the process of replacing the gas pipe in that  
 15 neighborhood already and there's a construction project  
 16 underway there. So, hopefully, that will solve this  
 17 problem.  
 18 MR. WHETSTONE: It does not attenuate  
 19 our concerns at all. In fact, a lot of these  
 20 explosions happen during those periods of time.  
 21 CHAIRMAN ROBERSON: I understand.  
 22 Okay. This matter will be deferred until the next  
 23 conference. Thank you.  
 24 MR. WHETSTONE: Will I be given notice  
 25 of that conference as well through Mr. Borum?

8 (Pages 26 to 29)

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1 CHAIRMAN ROBERSON: Yes, sir.  
 2 Mr. Borum will give you --  
 3 MR. WHETSTONE: Thank you, Mr. Borum.  
 4 CHAIRMAN ROBERSON: Madam clerk.  
 5 MS. DILLON: Next docket is Docket  
 6 No. 08-00053, Global Connection, Inc. of Tennessee;  
 7 joint petition of Global Connection, Inc. of Tennessee  
 8 and L6 Global, LLC, for approval of a transfer of  
 9 control of Global Connection, Inc. of Tennessee to  
 10 L6 Global LLC; consider joint application.  
 11 CHAIRMAN ROBERSON: Thank you. Global  
 12 Connection of Tennessee is certified to provide  
 13 facility-based and resold telecommunications services  
 14 in our state. As described in the joint application,  
 15 following the transfer Global will continue to offer  
 16 service under the same name, terms, rates, and  
 17 conditions, and the transfer will be transparent to its  
 18 customers. The applicants assert the transfer is in  
 19 the public interest because the company will be better  
 20 able to complete -- compete with increased access to  
 21 additional capital.  
 22 Therefore, I move approval of the  
 23 joint application pursuant to Tennessee Code Annotated  
 24 Section 65-4-113, contingent upon FCC approval.  
 25 Further, I move that the joint applicants be directed

1 to file with the Authority any documentation from the  
 2 FCC regarding subsequent action on this matter, and I  
 3 so move.  
 4 DIRECTOR KYLE: Second and vote yes.  
 5 DIRECTOR HARGETT: Vote yes.  
 6 MS. DILLON: Next with interconnection  
 7 and resale agreements, Docket No. 08-00073.  
 8 CHAIRMAN ROBERSON: I move approval.  
 9 DIRECTOR KYLE: Vote yes.  
 10 DIRECTOR HARGETT: Vote yes.  
 11 MS. DILLON: Miscellaneous business?  
 12 CHAIRMAN ROBERSON: None.  
 13 DIRECTOR HARGETT: None.  
 14 MS. DILLON: Next we have Section 3,  
 15 Directors Hargett, Jones, and Kyle.  
 16 Docket No. 08-00055, Knoxville-Knox  
 17 County Community Action Committee; petition of  
 18 Knoxville-Knox Community Action Committee allocation of  
 19 an N11 number, abbreviated dialing code; consider  
 20 petition.  
 21 DIRECTOR HARGETT: On April 11th,  
 22 2008, the Knoxville-Knox County Community Action  
 23 Committee filed a petition for an assignment of an N11  
 24 code, specifically 211, in order to provide information  
 25 and referral services to the citizens of Knox County

1 and all contiguous counties.  
 2 Simultaneously with the petition, East  
 3 Tennessee Information Referral, Inc., filed a petition  
 4 in Docket No. 08-00054 assigned to Section 5 today  
 5 requesting that its TRA-allocated 211 number be  
 6 transferred to Knoxville-Knox County Community Action  
 7 Committee.  
 8 An order issued by the Tennessee  
 9 Public Service Commission on October 20, 1993 in  
 10 Docket 92-13892 set forth criteria to determine the  
 11 most qualified applicant for allocation of each N11  
 12 number in each local calling area. The criteria in the  
 13 order for allocation included, number one, the overall  
 14 financial fitness of the applicant; number two, the  
 15 technical ability and willingness of the applicant to  
 16 provide the services on a permanent and continuous  
 17 basis; number three, the ability and willingness of the  
 18 applicant to abide by applicable Tennessee Public  
 19 Service Commission rules and policies; four, the rates,  
 20 services, and collection practices being utilized by  
 21 the applicant; five, the extent and duration of the  
 22 applicant's service to the local community; six,  
 23 anticipated future uses by the community of the  
 24 proposed service being offered by the applicant; and,  
 25 seven, the type of information services to be provided

1 by the applicant over N11 and its relative value to the  
 2 public and local community.  
 3 On July 30th, 2000 the FCC released  
 4 its third report and order and specifically found that  
 5 local assignments of the N11 codes can be made by state  
 6 commissions.  
 7 Do I have any questions or comments  
 8 from my fellow panel members, directors?  
 9 DIRECTOR KYLE: No.  
 10 DIRECTOR JONES: None.  
 11 DIRECTOR HARGETT: Okay. I have a  
 12 motion. Using the criteria established by the  
 13 Tennessee Public Service Commission in Docket  
 14 No. 92-13892 and after review of the information  
 15 provided by Knoxville-Knox County Community Action  
 16 Committee to qualify the allocation of 211 pursuant to  
 17 the established criteria, I find that, number one, the  
 18 proposed services that the petitioner described are an  
 19 excellent use of scarce abbreviated dialing codes and,  
 20 two, Knoxville-Knox County Community Action Committee  
 21 has been financially solvent over its lifetime, which  
 22 is 44 years of the organization.  
 23 And since they will have the continued  
 24 support of the call center operations from the crisis  
 25 intervention center located in Nashville and are able

<p style="text-align: right;">Page 34</p> <p>1 to handle the database management internally, I find  2 they have the managerial, technical, and financial  3 ability to qualify for 211 designation and would like  4 to make a motion to grant the allocation of 211 to  5 Knoxville-Knox County Community Action Committee for  6 Knox, Anderson, Blount, Jefferson, Grainger, Union,  7 Roane, Sevier, and Loudon Counties.  8 DIRECTOR KYLE: Second, vote yes.  9 DIRECTOR JONES: I vote yes.  10 DIRECTOR HARGETT: 3-0.  11 MS. DILLON: Next we have Docket  12 No. 08-00066, Tennessee Regulatory Authority; alleged  13 violations of Tennessee Code Annotated 65-4-401,  14 et. seq., do not call law by Sprint Spectrum, LP;  15 consider settlement agreement.  16 DIRECTOR HARGETT: I would like to ask  17 the parties to come forward and introduce themselves  18 for the record and discuss the settlement agreement.  19 If I can, while you're doing that,  20 this matter is before the panel to consider an executed  21 settlement agreement between the Consumer Services  22 Division of Tennessee Regulatory Authority and Sprint  23 Spectrum for alleged violations of the Tennessee Do Not  24 Call Sales Solicitation Law and concomitant regulations  25 Tennessee Code Annotated 65-4-404 and Tennessee</p>	<p style="text-align: right;">Page 36</p> <p>1 agreement.  2 Mr. Doug Nelson and Melvin Malone  3 representing Sprint Spectrum LP are present and will  4 respond to any questions you might have. The  5 investigative staff brings this settlement to you for  6 your consideration.  7 DIRECTOR HARGETT: Thank you,  8 Mr. Pemberton.  9 Mr. Malone, Mr. Nelson, do you have  10 any comments to add?  11 MR. NELSON: I don't.  12 MR. MALONE: No.  13 DIRECTOR HARGETT: You are in full  14 agreement with what Mr. Pemberton described?  15 MR. MALONE: As reflected in the  16 settlement agreement, yes.  17 DIRECTOR HARGETT: Thank you.  18 Do my fellow directors have any  19 comments or questions?  20 DIRECTOR KYLE: None.  21 DIRECTOR JONES: None.  22 DIRECTOR HARGETT: Any motion? If  23 not, I have one.  24 Considering the good faith effort,  25 Sprint undertook to resolve this violation of</p>
<p style="text-align: right;">Page 35</p> <p>1 Regulatory Authority Rule 1220-4-11-.071.  2 MR. MALONE: Melvin Malone on behalf  3 of Sprint Spectrum LP, and with me is Doug Nelson.  4 MR. PEMBERTON: I'm Charles Pemberton  5 with the Consumer Services Division.  6 Directors, between November the 8th of  7 2006 and April the 28th of 2008 the Authority received  8 72 complaints alleging violations of the Do Not Call  9 Law by Sprint Spectrum LP. Sprint reviewed each  10 complaint and replied to us that none of the calls were  11 made by Sprint employees.  12 A joint -- through a cooperative  13 effort between Sprint and the Consumer Services  14 Division, a joint investigation revealed that the  15 likely source of the calls are off-shore marketing call  16 centers retained by vendors of Sprint but not  17 authorized by Sprint to conduct telemarketing. The  18 call centers are using Sprint third-party dealer  19 service activation codes to sell Sprint service and  20 fulfill service orders fraudulently. The Authority has  21 received no further complaints against Sprint Spectrum.  22 The proposed settlement requires  23 Sprint Spectrum LP to make a one-time payment of  24 \$80,000 to the Authority in one payment within ten days  25 of the date that the TRA approves the settlement</p>	<p style="text-align: right;">Page 37</p> <p>1 Tennessee's Do Not Call Law, I believe the terms of  2 this settlement are fair and reasonable and will  3 effectuate the continued and future protection of  4 Tennessee consumers as intended by the imposition of  5 penalties under Tennessee Code Annotated 65-4-405(F).  6 Therefore, I move for approval of the settlement  7 agreement between the Consumer Services Division and  8 Sprint Spectrum filed in this docket on May 5, 2008.  9 DIRECTOR KYLE: Second and vote yes.  10 DIRECTOR JONES: I vote yes.  11 DIRECTOR HARGETT: 3-0. Next.  12 MS. DILLON: Next we have an addendum  13 to the final conference agenda. Docket No. 08-00076,  14 BellSouth Telecommunications, Inc.; tariff filing by  15 BellSouth Telecommunications, Inc., to increase the  16 per-call rate for directory assistance; consider  17 tariff.  18 DIRECTOR HARGETT: Thank you. On  19 May 9, 2008 BellSouth Telecommunications, Inc., doing  20 business as AT&amp;T, filed a tariff to increase directory  21 assistance rates effective June 2nd, 2008. The  22 directory assistance rates for Tennessee listings will  23 increase from \$1.35 per call to \$1.50 per call. The  24 directory assistance rates for listings outside of  25 Tennessee will increase from \$1.35 per call to \$1.99</p>

1 per call.

2 The tariff also proposes to eliminate  
3 the 45-cent charge for directory assistance call  
4 completion.

5 No changes have been proposed to the  
6 call allowances.

7 The tariff filing included a copy of  
8 the notice sent to customers by direct mail or bill  
9 insert to inform them of the rate increase.

10 Pursuant to Tennessee Code Annotated  
11 65-5-109, AT&T has the legal authority to increase  
12 rates for directory assistance, a nonbasic service, as  
13 it deems appropriate as long as it has sufficient  
14 headroom for the increasing revenue.

15 Do I have any questions or comments  
16 from my fellow directors?

17 DIRECTOR JONES: Yes. We do have an  
18 outstanding intervention in this docket. The Consumer  
19 Advocate on May 19th -- the Consumer Advocate and  
20 Protection Division of the Attorney General filed a  
21 complaint and petition to intervene requesting that the  
22 Authority convene a contested case to consider AT&T's  
23 directory assistance policy. So I was wondering if you  
24 were going to address that.

25 DIRECTOR KYLE: I would think that

1 depending on what we decide to do in this case, should  
2 we convene a contested case and appoint a hearing  
3 officer, then the hearing officer can deal with it, but  
4 we -- I think we ought to state our positions on this  
5 case first. We may not decide to convene a contested  
6 case. I don't know, but I can just state this for the  
7 record, that my position with respect to directory  
8 assistance has been clear and consistent every time  
9 this issue has come before me.

10 I believe that directory assistance is  
11 a basic service, but I acknowledge the court's ruling  
12 with regards to TRA Docket No. 96-01423 in which the  
13 court confirmed the majority's decision that directory  
14 assistance is a nonbasic service. Therefore, I vote to  
15 deny the rate increase for directory assistance  
16 consistent with my previous decision.

17 And as to convening a contested case  
18 to determine the appropriateness of the one-call  
19 allowance in light of the rate increase, I would vote  
20 yes and move to appoint a general counsel -- the  
21 general counsel or his designee to serve as hearing  
22 officer to prepare the matter for hearing before this  
23 panel.

24 DIRECTOR JONES: Director Hargett, my  
25 comment was going to the acknowledgment that the

1 Consumer Advocate Division did in fact file a petition  
2 and was going to inquire as to whether your motion  
3 would include some time period to give AT&T some -- an  
4 opportunity to respond to that petition, and then the  
5 matter of the petition for increase could be a separate  
6 matter. So my comments were merely going to the  
7 acknowledgment that we did, in fact, have a petition to  
8 intervene and it would be appropriate to provide an  
9 opportunity for AT&T to respond to that petition.

10 MR. HICKS: Mr. Chairman, may I  
11 comment very briefly?

12 DIRECTOR HARGETT: You may, Mr. Hicks.  
13 Please come forward.

14 MR. HICKS: Thank you, sir. Good  
15 afternoon, Directors and Staff. Guy Hicks on behalf of  
16 the AT&T Tennessee.

17 Just briefly, I just wanted to point  
18 out that the late-filed Consumer Advocate petition does  
19 not seek suspension of the tariff or suspension of the  
20 rate increase. Just to make clear on that.

21 So we would propose on behalf of AT&T  
22 Tennessee that the rate -- that the tariff and the rate  
23 be allowed to go into effect. We don't think there's  
24 any reason to convene a contested case, but that could  
25 be handled later in a response as Director Jones has --

1 as I understand, he is suggesting.

2 DIRECTOR HARGETT: I see the Consumer  
3 Advocate coming forward. Would you like to add  
4 something?

5 DIRECTOR JONES: Because it's  
6 certainly not clear in the petition.

7 MR. PHILLIPS: Yes, sir, with your  
8 permission. Timothy Phillips with the Consumer  
9 Advocate and Protection Division of the Tennessee  
10 Attorney General's office. We are not asking for  
11 suspension of the rate; however, as the rate goes up,  
12 we feel that puts pressure on what should be the  
13 allotment given for directory assistance, and I think  
14 that's precisely what we tried to explain in our  
15 complaint petition.

16 And recognizing, of course, Director  
17 Kyle's response, we still believe it's within your  
18 purview to suspend the tariff with respect to those  
19 rates. We also think, though, it would also be  
20 appropriate if you want to give AT&T a time to respond,  
21 but we also think it's appropriate in this circumstance  
22 to proceed even if you do grant the petition -- grant  
23 their tariff with respect to the rate, we still need to  
24 review what should be the allotment that's involved,  
25 because, you know, over a certain amount of time the

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1 rates on these calls have gone up. We find a nexus  
2 between the price of directory assistance and whether  
3 or not there should be an increase in the allotment  
4 given.

5 I do object to the reference that the  
6 complaint petition was somehow untimely. I believe  
7 this was actually filed -- although put in the mail on  
8 May 9th, it was actually filed May 12th. And given our  
9 approval process that we have to go through with the  
10 Tennessee Attorney General, we got it over here as  
11 quickly as we could possibly do.

12 DIRECTOR HARGETT: Thank you.  
13 Mr. Hicks?

14 MR. HICKS: May I respond briefly?

15 DIRECTOR HARGETT: Yes.

16 MR. HICKS: Two points. I'm pleased  
17 to hear that we have agreement among the parties that  
18 there's not a request to suspend the rate going into  
19 effect June 2, and there is a statute on point here  
20 titled 65-5-101 that provides criteria that the TRA is  
21 to look at before a party -- if a party seeks  
22 suspension, and those criteria have not been addressed  
23 or dealt with in the Consumer Advocate pleading.

24 Second, I would just remind the  
25 Authority -- this is probably unnecessary -- but

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1 I'm going to ask that we take about a five-minute break  
2 just to confer with staff. You did not have a motion  
3 on the table, if I remember; is that correct?

4 DIRECTOR KYLE: Well, that -- well, I  
5 would move to convene a contested case to determine the  
6 appropriateness of that one-call allowance in light of  
7 the rate increase and I would vote in that, that we  
8 appoint general counsel or his designee to serve as  
9 hearing officer and prepare the matter for this hearing  
10 and to also deal with the intervention that has been  
11 filed this morning.

12 DIRECTOR HARGETT: As part of your  
13 motion -- I did not hear anything regarding acting on  
14 the actual tariff itself; is that correct?

15 DIRECTOR KYLE: Well, I -- just to be  
16 consistent with my vote, I have always voted to deny  
17 rate increases for directory assistance.

18 DIRECTOR HARGETT: Okay. I just  
19 wanted to clarify. Let's take five minutes to confer  
20 with staff.

21 DIRECTOR KYLE: Thank you.

22 (Recess taken from 1:50 p.m.  
23 to 1:57 p.m.)

24 DIRECTOR HARGETT: Thank you.

25 Commissioner Kyle, you haven't given up on me, have

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1 Chairman Roberson had said recently in the Embarq case  
2 that there's no question in his mind, as ruled by the  
3 Middle Tennessee court of appeals and affirmed by the  
4 hearing officer and not disputed by the Consumer  
5 Advocate, that a price-regulated company can set the  
6 rate of nonbasic rates, such as DA, within its  
7 allowable headroom, and there's no dispute that AT&T  
8 has adequate headroom to do so.

9 DIRECTOR HARGETT: Director Jones, do  
10 you have anything you want to ask?

11 DIRECTOR JONES: The last time we had  
12 a price regulation filing was in agreement with  
13 allowing a rate to go into effect. I would not go as  
14 far as to say that there's an unfettered right to put  
15 the rate into effect as long as there's headroom. For  
16 instance, if mathematically if you divide the headroom  
17 by the number of subscribers and you came up with the  
18 rate for \$15, we still have an affirmative obligation  
19 to meet the just and reasonable test. So I don't think  
20 it's an unfettered right. So I just wanted to add that  
21 it takes -- it's more than mathematics when you look at  
22 headroom and the rate that we subsequently approve.

23 So I appreciate those comments. I  
24 think there are other considerations to be considered.

25 DIRECTOR HARGETT: Commissioner Kyle,

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1 you?

2 DIRECTOR KYLE: Not yet.

3 DIRECTOR HARGETT: Well, you know,  
4 it's that former legislator in me where five minutes  
5 turns into ten minutes, so forgive me.

6 DIRECTOR KYLE: We are so used to it.  
7 Thank you.

8 DIRECTOR HARGETT: I do have a  
9 question for the Consumer Advocate. I just want to  
10 clarify that you are not objecting to the rate itself?

11 MR. MCGEEHEE: We're not endorsing --  
12 I'm sorry. Ryan McGeehee with the Consumer Advocate.  
13 We're not endorsing the rate increase  
14 or in agreement with the rate increase. We have not  
15 asked for suspension of it, but I would point out that  
16 the TRA is within its province to suspend a rate  
17 increase of this nature if it believes it's in the  
18 public interest to do so.

19 DIRECTOR HARGETT: Mr. Hicks, do you  
20 have anything else you want to add? I'll give you one  
21 last chance.

22 MR. HICKS: Thank you. I would just  
23 add that the tariff before you only proposes changes in  
24 rates. It does not propose any changes in the terms  
25 and conditions and specifically no change to the call

12 (Pages 42 to 45)

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1 allowance.  
2 And I respectfully disagree with my  
3 colleague from the Consumer Advocate. I believe that  
4 as long as the rate increase complies with the price  
5 reg plan and the price reg statute and we have adequate  
6 headroom, that as a matter of law the rate increase  
7 should be approved. Thank you.  
8 DIRECTOR HARGETT: Okay. Director  
9 Jones, do you have anything you want to add? I'm going  
10 to make a motion. It can be a good starting point, and  
11 if we can work on it from there, we can.  
12 I'm going to move that we allow the  
13 tariff to go into effect June 2th, 2008. And,  
14 additionally, I'm going to ask that we give AT&T until  
15 May 28th to respond to the petition that's been filed  
16 today.  
17 Do I have a second?  
18 DIRECTOR JONES: I would second your  
19 motion, Director Hargett, and as I have said before, I  
20 have, with respect to the price regulation statute,  
21 looked at it and considered that the -- where there is  
22 headroom that the rate should be allowed to go into  
23 effect, and that's not an issue, but I don't believe  
24 that's an unfettered right as it has again been  
25 repeated here. I don't think there was an issue here

1 as to whether or not this particular tariff is in  
2 opposition to the public interest or even violates any  
3 provision of state or federal law. However, I do,  
4 again, believe that there is more required of the  
5 review of rates under price regulation than just a  
6 mathematical computation of headroom because of the  
7 resulting rate results in a very extreme rate that  
8 would be considered -- would have to be considered as  
9 to whether it's just and reasonable. I just don't  
10 think in this instance -- in taking a rate in one  
11 instance from \$1.35 to \$1.50 for the local calls and  
12 another one from \$1.35 to \$1.99 that there is a  
13 question as to whether there is a public interest issue  
14 or reasonable issue in this instance, in that very  
15 instance. And with those comments, I would second your  
16 motion and vote yes.  
17 DIRECTOR HARGETT: Thank you.  
18 Commission Kyle?  
19 DIRECTOR KYLE: No comment.  
20 DIRECTOR HARGETT: Okay.  
21 MS. DILLON: Next we have  
22 interconnection and resale agreements, Docket  
23 No. 08-00071.  
24 DIRECTOR HARGETT: Move approval.  
25 DIRECTOR KYLE: Second and vote yes.

1 DIRECTOR JONES: Vote yes.  
2 MS. DILLON: Resellers of local  
3 service, Docket No. 08-00032.  
4 DIRECTOR HARGETT: Move approval.  
5 DIRECTOR KYLE: Vote yes.  
6 DIRECTOR JONES: I vote yes.  
7 MS. DILLON: Miscellaneous business?  
8 DIRECTOR HARGETT: None.  
9 MS. DILLON: Next we have Section 4,  
10 Directors Jones, Kyle, and Roberson.  
11 Docket NO. 07-00224, Tennessee  
12 Regulatory Authority; docket to evaluate Chattanooga  
13 Gas Company's gas purchases and related sharing  
14 incentives; consider motion to dismiss.  
15 CHAIRMAN ROBERSON: Thank you. The  
16 Authority opened this docket and convened a contested  
17 case to address issues about asset management and  
18 capacity raised in a prior docket by the Consumer  
19 Advocate and the Chattanooga Manufacturers Association.  
20 Those entities were told they could intervene, but  
21 ultimately this is an effort -- but ultimately an  
22 effort made by the agency to address these issues.  
23 These same issues have come up in other dockets, but  
24 this is the case in which we have chosen to litigate  
25 them.

1 In my opinion, we could have held up  
2 the approval of the company's asset management  
3 agreement pending the outcome of this docket, but we  
4 chose to move forward because we could address those  
5 issues raised in this docket. I do not believe that we  
6 have litigated these issues in any meaningful way and  
7 so I reject the argument made by the company that these  
8 issues are being relitigated or are somehow precluded  
9 by the approval of the asset management agreement.  
10 These issues are ongoing and  
11 continuous for the company, the consumers, and the TRA  
12 has jurisdiction to review them at any time. I must  
13 reject the notion that these issues are not ripe for  
14 review. These issues are not abstract, but rather are  
15 based on activities that are happening right now.  
16 I don't think we need to wait until  
17 there is a new RFP before we address these issues, nor  
18 am I persuaded by the arguments that the Authority  
19 would be retroactively changing the law or improperly  
20 impairing the current contract. The terms of the  
21 contract anticipate the possible exercise of the TRA's  
22 proper regulatory powers.  
23 Based on these comments, I find that  
24 the TRA has subject matter jurisdiction over the  
25 matters in this docket. I further find that asset



1 management and gas capacity are ongoing issues that are  
2 ripe for review by the TRA and that the TRA can review  
3 these matters at any time as part of its broad  
4 regulatory authority over public utilities.

5 I also find that the Consumer Advocate  
6 has stated a claim upon which relief can be granted by  
7 this agency. Therefore, I move that the motion to  
8 dismiss be denied and the company's request to this  
9 docket to the issue of excess capacity be denied, and I  
10 so move.

11 DIRECTOR JONES: Chairman Roberson, I  
12 will second your motion and agree. I will also note  
13 that this was a particularly interesting docket to  
14 consider. We had the pleadings in front of us, but  
15 there's one aspect of this is that the Advocate  
16 actually filed the petition to intervene. So its basis  
17 for being in this docket was its intervention, and in  
18 considering that intervention, the Authority considered  
19 its duties, its rights, its immunities, whether its  
20 interests were going to be addressed in this  
21 proceeding, and we decided that they would be and they  
22 were allowed intervention.

23 In some respect this motion to dismiss  
24 seemed to be a peripheral attack, a kind of procedural  
25 ambush on our decision to have already allowed the

1 Advocate approval of its petition to intervene.  
2 Also I think that the Authority in  
3 bifurcating the Advocate's concerns with respect to  
4 asset management and capacity -- we said that we would  
5 address these concerns in another proceeding -- that we  
6 had this obligation to do just that. I think that that  
7 office's negotiations and considerations in a rate case  
8 would have been extremely different if it had known  
9 that its other concerns with respect to asset  
10 management capacity would not be considered as we  
11 stated that they would be.

12 So given those statements and those  
13 particular observations and some conclusions on my  
14 part, I second your motion and vote yes.

15 DIRECTOR KYLE: This is tough. I'll  
16 vote with you.

17 CHAIRMAN ROBERSON: Thank you. Next  
18 matter.

19 MS. DILLON: Next we have Docket  
20 No. 07-00266, Chattanooga Gas Company; Chattanooga Gas  
21 Company annual incentive plan filing for the 12 months  
22 ended June 30th, 2007; consider staff audit.

23 CHAIRMAN ROBERSON: Thank you. The  
24 company's incentive plan filing was received on  
25 November the 29th, 2007. An audit staff filed the

1 audit report on May the 2nd, 2008. The audit report on  
2 the IPA tariff was for the year ending June 30, 2007.

3 Audit staff reported no material  
4 findings and concluded that the gas purchases met the  
5 criteria specified in the tariff. Audit staff also  
6 recommended that the company be released from the  
7 prudence audit requirements in the PGA rules.

8 I move that we accept the audit  
9 staff's findings and recommendations and approve  
10 Chattanooga Gas Company's annual incentive plan filing  
11 for the 12 months ending June 30, 2007, and I so move.

12 DIRECTOR KYLE: Second and vote yes.

13 DIRECTOR JONES: Vote yes.

14 MS. DILLON: Next we have Docket  
15 No. 08-00051, Hickory Star Water Company; petition of  
16 Hickory Star Water Company, LLC for approval of  
17 adjustment of its rates and charges; consider motion  
18 for interim emergency relief.

19 CHAIRMAN ROBERSON: The company filed  
20 its rate case on April the 7th, 2008. At our  
21 April 21st conference the Authority suspended the  
22 request -- the requested rates for three months. On  
23 May the 9th Hickory Star filed this motion requesting  
24 interim emergency relief pending the results of the  
25 rate case.

1 TCA 65-5-103(B)(2) allows the  
2 Authority to permit the rates to become effective if an  
3 emergency exists or the utility's credit or operations  
4 will be materially impaired or damaged.

5 The motion states that the requested  
6 rate case reflects a pass-through whole dollar amount  
7 of the rates charged to it by Maynardville. Hickory  
8 Star maintains that it has the financial ability to  
9 refund or credit the increase if it is later reduced as  
10 a result of the pending rate case.

11 This hearing was duly noticed by the  
12 hearing officer on May the 9th, 2008, and since it is a  
13 public hearing, I will ask if there's any members of  
14 the public that would like to come forward at this time  
15 to address the Authority on this docket?

16 (No response.)

17 CHAIRMAN ROBERSON: Let the record  
18 show that no one has sought recognition.

19 I have a motion if we're ready.

20 DIRECTOR KYLE: Yes.

21 CHAIRMAN ROBERSON: I find that the  
22 company has met the requirements of TCA 65-5-103(B)(2).  
23 Therefore, I move that we grant the motion for interim  
24 emergency relief and that the rates contained in the  
25 petition be effective immediately and remain in effect



1 until a final determination is made in the rate case as  
2 provided by the statute.

3 I further move that no bond be  
4 required to be posted by the company. I also would  
5 move to direct the hearing officer to act as  
6 expeditiously as possible to bring this matter to a  
7 hearing before the panel as soon as possible, and I so  
8 move.

9 DIRECTOR JONES: Just a point of  
10 clarification, Chairman, in your motion in us not  
11 requiring a bond, that's not to suggest that if the  
12 ultimate rates that are set are lower, then the rates  
13 that we allow in the interim will not be refunded?

14 CHAIRMAN ROBERSON: No. That is  
15 inherent in my motion.

16 DIRECTOR JONES: Thank you. With that  
17 clarification, I would second and vote yes.

18 DIRECTOR KYLE: Yes.

19 MS. DILLON: Miscellaneous business?

20 CHAIRMAN ROBERSON: None.

21 MS. DILLON: Next we have Section 5,  
22 Directors Hargett, Jones, and Roberson.

23 Docket No. 08-00054, East Tennessee  
24 Information and Referral, Inc.; petition of East  
25 Tennessee Information and Referral, Inc., to transfer

1 opinion, regarding approval by a panel is inconsistent  
2 with the plain language and intent of Authority  
3 Rule 1220-4-1-.08.

4 MS. DILLON: Miscellaneous business?

5 CHAIRMAN ROBERSON: Any other further  
6 business to come before the Authority at this time?

7 (No response.)

8 CHAIRMAN ROBERSON: If not, without  
9 objection, this conference is adjourned.

10 Thank you.

11 (Proceedings concluded at  
12 2:11 p.m.)  
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1 its N11 number abbreviated dialing code; consider  
2 petition.

3 CHAIRMAN ROBERSON: Based on the  
4 action today in Docket 08-00055, I find that the  
5 transfer of the 211 allocation in the listed counties  
6 will strengthen 211 service in East Tennessee.  
7 Therefore, I move that we grant the petition.

8 DIRECTOR HARGETT: Second and vote  
9 yes.

10 DIRECTOR JONES: I vote yes.

11 MS. DILLON: Next we have  
12 interconnection and resale agreements, Docket  
13 No. 08-00072.

14 CHAIRMAN ROBERSON: I move approval.

15 DIRECTOR HARGETT: Second and vote  
16 yes.

17 DIRECTOR JONES: I vote yes.

18 MS. DILLON: Next we have request for  
19 name change, Docket No. 07-00249.

20 CHAIRMAN ROBERSON: I move approval.

21 DIRECTOR HARGETT: Second and vote  
22 yes.

23 DIRECTOR JONES: Consistent with the  
24 position I have taken previously, I abstain from any  
25 decision on whether to approve a name change. In my

1 REPORTER'S CERTIFICATE

2 STATE OF TENNESSEE )  
3 COUNTY OF DAVIDSON )

4 I, Christina M. Rhodes, Registered  
5 Professional Reporter, Certified Court Reporter, and  
6 Notary Public for the State of Tennessee, hereby  
7 certify that I reported the foregoing proceedings at  
8 the time and place set forth in the caption thereof;  
9 that the proceedings were stenographically reported by  
10 me; and that the foregoing proceedings constitute a  
11 true and correct transcript of said proceedings to the  
12 best of my ability.

13 I FURTHER CERTIFY that I am not  
14 related to any of the parties named herein, nor their  
15 counsel, and have no interest, financial or otherwise,  
16 in the outcome or events of this action.

17 IN WITNESS WHEREOF, I have hereunto  
18 affixed my official signature and seal of office this  
19 22nd day of May, 2008.  
20  
21  
22  
23  
24  
25

CHRISTINA M. RHODES  
REGISTERED PROFESSIONAL REPORTER  
AND NOTARY PUBLIC FOR THE STATE  
OF TENNESSEE

My Commission Expires  
January 23, 2010

TRA Conference (complete), 5/19/08

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Minutes of the Authority Conference of  
Monday, May 19, 2008, stand approved.

CHAIRMAN EDDIE ROBERSON

DIRECTOR SARA KYLE

DIRECTOR RON JONES

DIRECTOR TRE HARGETT

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BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

ADMINISTRATIVE SESSION

Hearing Room 110  
244 Washington Street  
Atlanta, Georgia

Tuesday, May 20, 2008

The administrative session was called to order at  
10:00 a.m., pursuant to Notice.

PRESENT WERE:

CHUCK EATON, Chairman  
DOUG EVERETT, Vice Chairman  
ANGELA E. SPEIR, Commissioner  
STAN WISE, Commissioner  
ROBERT B. BAKER, JR., Commissioner

P R O C E E D I N G S

CHAIRMAN EATON: All right, we'll go ahead and get started here. This is the May 20, 2008 administrative session of the Georgia Public Service Commission.

We'll turn our attention first to the Utility consent agenda. Would any Commissioner like any item on the consent agenda held or moved to the regular agenda?

(No response.)

CHAIRMAN EATON: Hearing no such request, all in favor of approving the items on the consent agenda, please say aye.

CHAIRMAN EATON: Aye.

VICE CHAIRMAN EVERETT: Aye.

COMMISSIONER SPEIR: Aye.

COMMISSIONER WISE: Aye.

COMMISSIONER BAKER: Aye.

CHAIRMAN EATON: The consent agenda is approved unanimously.

We'll now move to the regular agenda.

MR. MASON: Good morning.

Item R-1 is Docket 25549 Georgia Landscape Group, Inc., GUFPA case 07-01977. Consideration of a request by Georgia Landscape Group, Inc. for reconsideration of the Commission's order of March 26, 2008 assessing the \$15,000 penalty for O.C.G.A. 46-2-91.

1           At Energy Committee last Thursday, I gave you the  
2 history of this case leading up to this order being issued  
3 assessing the \$15,000 penalty. I'll not bore you with that  
4 history again unless you'd like to hear it one more time.

5           (Laughter.)

6           MR. MASON: But staff recommendation is that the  
7 reconsideration be denied and that would our recommendation  
8 again this morning.

9           CHAIRMAN EATON: You've heard staff's  
10 recommendation. All in favor, please say aye.

11           COMMISSIONER BAKER: Well, Mr. Chairman, I looked  
12 at this matter and heard Mr. Bulloch at Committee.  
13 Definitely the company is at fault here for failing to  
14 properly respond to the notices and to the opportunities  
15 they had to seek corrective action and comply with the rules  
16 and regulations.

17           But realistically, if this \$15,000 fine is  
18 imposed, the odds of collecting part or any of it is  
19 probably slim to none, especially dealing with a landscaper,  
20 it's probably not the best market for landscapers these  
21 days.

22           I'm going to offer a proposal for you to consider,  
23 before making a motion for reconsideration. You can vote  
24 based on whether you think the proposal is worthwhile or  
25 not.

1           My recommendation to the Commission is to impose a  
2     \$3000 fine on the company and require them to complete all  
3     GUFPA-approved training no later than June 2. And if they  
4     don't complete the training and pay in full the \$3000  
5     penalty by Monday, June 2, then the \$15,000 penalty and full  
6     sanctions will go into effect. This is the absolute last  
7     opportunity for this small business to do what they need to  
8     do to comply with the law and make amends for their  
9     behavior.

10           So I'll make a motion at this time for  
11     reconsideration and if that is acceptable, then I'll make  
12     the follow-up motion.

13           CHAIRMAN EATON: We will take up Commissioner  
14     Baker's motion for reconsideration. So a yes vote would be  
15     to reconsider.

16           All those in favor, please signify by saying aye.

17           CHAIRMAN EATON: Aye.

18           VICE CHAIRMAN EVERETT: Aye.

19           COMMISSIONER SPEIR: Aye.

20           COMMISSIONER WISE: Aye.

21           COMMISSIONER BAKER: Aye.

22           CHAIRMAN EATON: Opposed.

23           (No response.)

24           CHAIRMAN EATON: Commissioner Baker's motion  
25     passes unanimously.

1           COMMISSIONER BAKER: Well, now I have to make the  
2 motion.

3           CHAIRMAN EATON: For reconsideration.

4           COMMISSIONER BAKER: Okay, now I'll make the  
5 actual motion.

6           The motion will be that Georgia Landscape Group --  
7 that the Commission's order will be amended requiring  
8 Georgia Landscape Group to pay a \$3000 fine and to complete  
9 all GUFPA-authorized training no later than June 2. And  
10 both conditions of the motion must be completely fulfilled  
11 by June 2. If that is not the case, then the original staff  
12 recommendation of a \$15,000 penalty for the violation of 46-  
13 2-91 would automatically go into effect. And that is  
14 regardless of when the order is signed, it's June 2, that's  
15 the drop dead deadline. That is my motion.

16          CHAIRMAN EATON: Okay, we'll take up Commissioner  
17 Baker's motion. All those in favor, please signify by  
18 saying aye.

19          CHAIRMAN EATON: Aye.

20          VICE CHAIRMAN EVERETT: Aye.

21          COMMISSIONER SPEIR: Aye.

22          COMMISSIONER WISE: Aye.

23          COMMISSIONER BAKER: Aye.

24          CHAIRMAN EATON: Opposed.

25          (No response.)

1                   CHAIRMAN EATON:   Commissioner Baker's motion  
2 passes unanimously.

3                   Item R-2.

4                   MR. STAIR:   Item R-2 is Docket Number 26794,  
5 Georgia Power Company's Fuel Cost Recovery Application and  
6 consideration of staff's recommendation to adopt the  
7 stipulation.

8                   Commissioners, you previously received a copy of  
9 the stipulation that was entered into on May 9 between the  
10 Commission's public interest advocacy staff and Georgia  
11 Power Company and you also heard a full description of that  
12 stipulation at Thursday's Energy Committee meeting.   That  
13 stipulation is intended to resolve all the issues in Georgia  
14 Power's FCR-20 fuel case that was heard by Commissioners on  
15 April 29, with the exception of one issue, the request to  
16 reinstitute seasonal fuel rates.

17                  Unless requested to do so by a Commissioner, I  
18 won't review the individual terms of the stipulation again  
19 and I will simply reiterate staff's recommendation that the  
20 Commission adopt the stipulation entered into by the staff  
21 and Georgia Power and resolve the seasonal fuel issue by  
22 deferring any reinstatement of seasonal fuel rates until the  
23 working group created by this Commission in the last case  
24 has had an opportunity to complete its analyses.

25                  I'll be happy to answer any questions you might



1 have.

2 COMMISSIONER WISE: Commissioners, let me go ahead  
3 and move adoption of staff's recommendation and approval of  
4 stipulation 1; and at the same time, as a second part of  
5 this, stipulation 2 -- we'll call it stipulation 2, I don't  
6 know what we call it. Do you have a better name for it, Mr.  
7 Stair?

8 MR. STAIR: I think stipulation --

9 COMMISSIONER WISE: The one from Georgia Power,  
10 GTMA, GIG and Resource Supply.

11 MR. STAIR: That's fine. Stipulation 1 is the  
12 staff and company and stipulation 2 is the one entered into  
13 by the company and the industrials.

14 COMMISSIONER WISE: I move approval of both of  
15 these stipulations.

16 CHAIRMAN EATON: Okay. Questions or comments?

17 (No response.)

18 CHAIRMAN EATON: We'll take up Commissioner  
19 Wise's motion. All those in favor, please signify by saying  
20 aye.

21 Aye.

22 COMMISSIONER WISE: Aye.

23 CHAIRMAN EATON: All those opposed.

24 COMMISSIONER SPEIR: No.

25 COMMISSIONER EVERETT: No.

1 COMMISSIONER BAKER: No.

2 CHAIRMAN EATON: Commissioner Wise's motion fails  
3 with Eaton and Wise voting yes; Commissioner Baker, Everett  
4 and Speir opposed.

5 COMMISSIONER WISE: Just to be clear, which  
6 stipulation did we vote on?

7 CHAIRMAN EATON: I thought we were voting on both  
8 of them.

9 COMMISSIONER WISE: No, I ask that -- that's my  
10 mistake, Mr. Chairman. I think that if we could vote on  
11 them individually would be better, but I'll go ahead and  
12 renew -- and just let that vote stand -- that we approve  
13 number 1, stipulation number 1, and that as a second part,  
14 as a separate motion, stipulation number 2, which is the  
15 Georgia Power, GTMA, GIG, Resource Supply stip.

16 CHAIRMAN EATON: Okay, for clarification, I guess  
17 we will vote on the second stipulation first, go ahead and  
18 vote on that.

19 All those in favor, please signify by saying aye.  
20 Aye.

21 COMMISSIONER WISE: Aye.

22 CHAIRMAN EATON: All those opposed.

23 COMMISSIONER SPEIR: No.

24 COMMISSIONER EVERETT: No.

25 COMMISSIONER BAKER: No.

1           CHAIRMAN EATON:    Okay, Commissioner Wise's motion  
2   on adopting the second stipulation fails with Commissioner  
3   Wise and Eaton voting yes; Commissioner Baker, Everett and  
4   Speir opposed.

5           We will now take up Commissioner Wise's motion for  
6   the first stipulation.

7           All those in favor, please signify by saying aye.

8           COMMISSIONER EVERETT:   Aye.

9           CHAIRMAN EATON:    Aye.

10          COMMISSIONER WISE:   Aye.

11          CHAIRMAN EATON:    All those opposed.

12          COMMISSIONER SPEIR:   No.

13          COMMISSIONER BAKER:   No.

14          CHAIRMAN EATON:    Okay, Commissioner Wise's motion  
15   passes with Wise, Eaton, Everett voting yes and Baker and  
16   Speir voting no.

17          MR. STAIR:   And I believe since you approved  
18   stipulation 1, what now has to happen is now the Commission  
19   has to entertain a motion -- what stipulation 1 has done is  
20   essentially reserve the issue of seasonal fuel rates. So now  
21   that you have adopted the staff/Georgia Power stipulation,  
22   what now has to happen is I think you need to entertain a  
23   motion as to what you want to do with seasonal fuel rates.

24          COMMISSIONER WISE:   I thought that was part of  
25   staff's recommendation.

1 MR. STAIR: No, staff's recommendation -- well, if  
2 you've adopted staff's recommendation -- just to be clear --

3 COMMISSIONER WISE: Staff's recommendation and the  
4 stipulation, which would in fact postpone the seasonal fuel  
5 decision until next fuel case after the working study group.

6 MR. STAIR: Okay. I'm sorry, Commissioner, I  
7 misunderstood. Very well.

8 COMMISSIONER WISE: So just wait another year.

9 CHAIRMAN EATON: That was my impression.

10 (Laughter.)

11 MR. STAIR: Very well.

12 COMMISSIONER EVERETT: That's what I thought it  
13 did, was just the working group finish its job.

14 MR. STAIR: Then I think I should probably sit  
15 down.

16 (Laughter.)

17 CHAIRMAN EATON: We'll take up item R-3.

18 MS. McGUIRE: Morning, Commissioners.

19 Item R-3 is Docket 26837 SCANA Energy Marketing:  
20 Allegation of Violations of the National Gas Competition and  
21 Deregulation Act and Natural Gas Consumers' Relief Act.  
22 Consideration of Commission staff's motion to strike any  
23 testimony filed by SCANA Energy Marketing on May 19, 2008.

24 On May 13, SCANA notified staff via a letter of  
25 SCANA's intent to file rebuttal testimony on May 19. Staff

1 filed its motion to strike the next day, on May 14. And the  
2 motion was to strike, or in the alternative to allow staff  
3 to file its final round of testimony at least ten days after  
4 May 19.

5 The Commission heard argument last week from both  
6 staff and SCANA and once again, staff recommends that the  
7 Commission either strike the testimony, or in the  
8 alternative allow staff ten days from yesterday in which to  
9 file its final round of rebuttal.

10 COMMISSIONER WISE: Which would be what, the 28th,  
11 Ms. McGuire?

12 MS. McGUIRE: 29th.

13 COMMISSIONER WISE: Thank you.

14 COMMISSIONER BAKER: Since this was -- the  
15 rebuttal testimony by SCANA was filed late yesterday  
16 afternoon, it appears that it is -- are these from two new  
17 witnesses that have -- did they originally file a response  
18 to the staff's April 22 testimony?

19 MS. McGUIRE: No, they did not. SCANA's direct  
20 testimony, which was filed on May 7, the witnesses were  
21 Brett Newsom and George Devlin. And the witnesses who filed  
22 rebuttal testimony of behalf of SCANA are George Easton and  
23 Robert Topel.

24 COMMISSIONER WISE: Commissioners, I'll move that  
25 staff be allowed to extend and revise this scheduling order

1 to May 28.

2 COMMISSIONER BAKER: I'll make just a general  
3 comment. I think this is -- if you're not going to strike  
4 the testimony, which is probably what should be done since  
5 this is completely new -- this is not responding to any  
6 additional testimony filed on May 7, since no party filed  
7 any testimony on May 7 other than SCANA and since SCANA  
8 isn't going to rebut itself. But I do think that by  
9 allowing additional rebuttal testimony from a party that is  
10 not the moving party in a situation where there has not been  
11 any new testimony filed on May 7, we're setting a really bad  
12 precedent for the future and parties are going to -- could  
13 potentially abuse this precedent to extend proceedings, to  
14 make late-filed filings of testimony in the rebuttal phase.

15 And depending on the situation in future cases where we  
16 might not have the luxury of time to allow reasonable  
17 opportunity as we do in this particular case, it could put  
18 the moving party -- whether it's staff or another entity --  
19 in a real bind having these last minute filings made with no  
20 indication -- this is not a follow up to Mr. Devlin's  
21 testimony or to Mr. Newsom's testimony. This is completely  
22 new testimony, should have been filed May 7. If there was a  
23 problem with making the May 7 filing date, the company  
24 should have asked for an extension in which to make this  
25 filing. But to just make this late filing is tantamount to

1 sandbagging, but fortunately in this particular case, staff  
2 will have an opportunity to take a look at it and make a  
3 surrebuttal filing. Hopefully, SCANA is not going to make a  
4 surrebuttal filing on the 28th.

5 COMMISSIONER WISE: An amazing presumption,  
6 Commissioners, that in fact we should, as a Commission,  
7 decide what, when, how SCANA files, what they should say in  
8 their filings, when it was staff's procedural and scheduling  
9 order that this Commission adopted and that once again, if  
10 there's a mistake then somebody should have said something.

11 But SCANA looked at this order and said we are entitled --  
12 we can file what and where we wish and yet, to stand up here  
13 and say it's a late filing.

14 Commissioners, this is simply a filing. This is  
15 SCANA's case, this is an important case. And to deny them  
16 the right goes against common sense, goes against good  
17 government and a presumption that they are in fact guilty,  
18 as I've said that the staff and the newspapers and some on  
19 this Commission have said all along -- let's let them file  
20 their case, let's let them have a fair hearing and then  
21 we'll go forward.

22 If staff has in fact made a mistake in their  
23 procedural and scheduling order, let's go ahead and allow  
24 them, as I've made the motion, to extend and give them the  
25 opportunity to file. And that's what my motion says.

1           COMMISSIONER BAKER: Well, first, Commissioner  
2     Wise, nobody has insinuated that they are guilty. We're  
3     waiting to hear the evidence in this case. You're jumping  
4     the gun on this. I commended you for taking the rational  
5     approach and allowing staff an opportunity to respond, but  
6     that said, this is still -- this has never happened before,  
7     this is completely contrary to established precedent here  
8     and I hope that we all can live with this precedent when  
9     other parties take advantage of it to make late filings.

10           And nobody is trying to cut SCANA off as far as  
11     what they respond to. But it sure is nice to be able to --  
12     they had an opportunity to file this testimony on May 7,  
13     they didn't. They didn't ask for an extension, which they  
14     could have done. Nobody is trying to cut them off as far as  
15     short changing their defense of this case, but there are  
16     just certain rules and procedures that need to be followed  
17     so that everybody has an opportunity to review the evidence  
18     and prepare fair responses. And staff needs that  
19     opportunity also to prepare their response to this late  
20     filed testimony by these two expert witnesses who just came  
21     in the other day.

22           MS. McGUIRE: Commissioner Wise, excuse me, I  
23     think you said that staff would have until May 28, did you  
24     mean to say the 29th?

25           COMMISSIONER WISE: Yes, ma'am.



1 MS. McGUIRE: Thanks.

2 COMMISSIONER WISE: Chairman Eaton has already  
3 corrected me on that, he just hadn't got a chance to ask you  
4 about that yet.

5 MS. McGUIRE: Thanks.

6 COMMISSIONER SPEIR: Mr. Chairman before we vote,  
7 if I could just ask Commissioner Wise or you to please walk  
8 back through his motion so I can be clear, following the  
9 discussion, exactly the time line that we're discussing  
10 here.

11 CHAIRMAN EATON: Would you mind?

12 COMMISSIONER WISE: Ms. McGuire, ten days is what?

13 MS. McGUIRE: May 29.

14 COMMISSIONER SPEIR: Okay. I'm sorry, that didn't  
15 fully address my question, Commissioner Wise.

16 If you would, are you making a motion to adopt the  
17 staff's alternative recommendation to allow SCANA --

18 COMMISSIONER WISE: That's --

19 COMMISSIONER SPEIR: Excuse me. -- to file  
20 rebuttal and staff to file surrebuttal, and then delaying  
21 the hearing for ten days?

22 COMMISSIONER WISE: I am not -- the staff does not  
23 address what SCANA can or cannot do, they've previously done  
24 that in the procedural and scheduling order. And despite  
25 the fact that it's called a late filing, it was in fact

1 filed on time. So --

2 MS. McGUIRE: Commissioner Wise, it was my  
3 understanding that you weren't moving to change the hearing  
4 date, but just to allow staff ten days from yesterday to  
5 file its response.

6 COMMISSIONER WISE: Yes, ma'am, that's correct.

7 MS. McGUIRE: And that the hearings would remain  
8 as they're scheduled for June 17 and 18.

9 COMMISSIONER SPEIR: Okay. I want to be sure that  
10 we're fair to everybody here. I think -- and I hope, I feel  
11 confident -- that it is each Commissioner's goal and  
12 everyone's goal in this process to make sure that everyone  
13 has an opportunity to fully present their case, say  
14 everything they need to say, get it on the record, have  
15 ample time to review all of the information, so there's no  
16 ambush trial on the part of anyone in this, but simply that  
17 we hear all of the facts and all of the information so that  
18 we can render a fair decision.

19 So, having said that, it's my understanding that,  
20 Commissioner Wise, your motion is to adopt the alternative  
21 staff recommendation which is not to strike SCANA's  
22 testimony but is to allow SCANA to file their rebuttal, as  
23 they have done, to allow staff the opportunity for  
24 surrebuttal by May 29, correct?

25 COMMISSIONER WISE: Yes, ma'am.

1           COMMISSIONER SPEIR: And then the final question I  
2 have, Ms. McGuire, is does that allow staff an opportunity,  
3 a full opportunity to respond and prepare for the case with  
4 the hearing beginning on June 17?

5           MS. MCGUIRE: It does.

6           COMMISSIONER SPEIR: Okay, then that addresses my  
7 concern.

8           CHAIRMAN EATON: Any other questions or comments?  
9 (No response.)

10          CHAIRMAN EATON: All those in favor of  
11 Commissioner Wise's motion, please signify by saying aye.

12          CHAIRMAN EATON: Aye.

13          VICE CHAIRMAN EVERETT: Aye.

14          COMMISSIONER SPEIR: Aye.

15          COMMISSIONER WISE: Aye.

16          COMMISSIONER BAKER: Aye.

17          CHAIRMAN EATON: Commissioner Wise's motion  
18 passes unanimously.

19          We are on item R-3 -- I'm sorry -- R-4.

20          MR. REINHARDT: Good morning, Commissioners.

21          Item R-4 is consideration of staff's  
22 recommendation on petitions for adoption of the Sprint/AT&T  
23 interconnection agreement in Docket Numbers 25430 which is  
24 NPCR, Inc. d/b/a Nextel Partners and Docket Number 25431 by  
25 Nextel South Corp.

1           As discussed at last week's Telecommunications  
2 Committee, the staff recommends adoption of the requests.

3           CHAIRMAN EATON:   You've heard staff's  
4 recommendation, all those in favor, please signify by saying  
5 aye.

6           CHAIRMAN EATON:   Aye.

7           VICE CHAIRMAN EVERETT:   Aye.

8           COMMISSIONER SPEIR:   Aye.

9           COMMISSIONER WISE:   Aye.

10          COMMISSIONER BAKER:   Aye.

11          CHAIRMAN EATON:   Staff's recommendation passes  
12 unanimously.

13          Item R-5.

14          MR. BOWLES:   Commissioner, we would like to hold  
15 R-5.   Apparently we have an agreement that they will file  
16 the documents pursuant to the trade secret rule.   So we  
17 would like to hold this item.

18          CHAIRMAN EATON:   We'll put that on hold until the  
19 next session.

20          Does any Commissioner have any other matter to be  
21 taken up on Utilities?

22          (No response.)

23          CHAIRMAN EATON:   If not, we'll move to  
24 Transportation agenda.

25          This looks like it's an all consent agenda?

1 MR. WEST: Yes, it is.

2 CHAIRMAN EATON: Any Commissioner have any item  
3 on the consent agenda that they'd like to move to the  
4 regular agenda?

5 (No response.)

6 CHAIRMAN EATON: If not, all those in favor of  
7 approving the consent agenda, Transportation consent agenda,  
8 please signify by saying aye.

9 CHAIRMAN EATON: Aye.

10 VICE CHAIRMAN EVERETT: Aye.

11 COMMISSIONER SPEIR: Aye.

12 COMMISSIONER WISE: Aye.

13 COMMISSIONER BAKER: Aye.

14 CHAIRMAN EATON: The Transportation consent  
15 agenda passes unanimously.

16 MR. WEST: Thank you, Commissioners.

17 CHAIRMAN EATON: Does the Commission have any  
18 other item to be taken up on the Transportation agenda?

19 (No response.)

20 CHAIRMAN EATON: If not, we'll move to the  
21 Administrative Affairs agenda.

22 MS. FLANNAGAN: Good morning, Commissioners. We  
23 have a consent agenda before you.

24 CHAIRMAN EATON: Okay, any Commissioner wish to  
25 hold any item or move it to the regular agenda?

1 (No response.)

2 CHAIRMAN EATON: If not, all those in favor of  
3 approving the Administrative Affairs consent agenda, please  
4 signify by saying aye.

5 CHAIRMAN EATON: Aye.

6 VICE CHAIRMAN EVERETT: Aye.

7 COMMISSIONER SPEIR: Aye.

8 COMMISSIONER WISE: Aye.

9 COMMISSIONER BAKER: Aye.

10 CHAIRMAN EATON: Consent agenda passes  
11 unanimously.

12 MS. FLANNAGAN: Thank you.

13 CHAIRMAN EATON: Is there any other business to  
14 be taken up today?

15 (No response.)

16 CHAIRMAN EATON: If not, we are adjourned.

17 (Whereupon, the administrative session was  
18 concluded at 10:21 a.m.)

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C E R T I F I C A T E

I, Peggy J. Warren, Certified Court Reporter, do hereby certify that the foregoing transcript is an accurate record of the proceedings had in the above-entitled matter at the time and place therein set forth.

\_\_\_\_\_  
Peggy J. Warren, CVR-CM, CCR A-171

The minutes of the Administrative Session were approved this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Chuck Eaton, Chairman

\_\_\_\_\_  
Reece McAlister,  
Executive Secretary

**Docket No. 25430**

**In Re: Petition for Approval of NPCR, Inc., d/b/a Nextel Partners' Adoption of the Interconnection Agreement between Sprint Communications Company L.P., Sprint Spectrum L.P. d/b/a Sprint PCS and BellSouth Telecommunications, Inc. d/b/a AT&T Georgia, d/b/a AT&T Southeast**

**Docket No. 25431**

**In Re: Petition for Approval of Nextel South Corp.'s Adoption of the Interconnection Agreement between Sprint Communications Company L.P., Sprint Spectrum L.P. d/b/a Sprint PCS and BellSouth Telecommunications, Inc. d/b/a AT&T Georgia, d/b/a AT&T Southeast**

Staff recommends approval of the Petitions of NPCR, Inc. d/b/a Nextel Partners and Nextel South Corp. (collectively referred to herein as "Nextel") to adopt the interconnection agreement between Sprint Communications Company L.P., Sprint Spectrum L.P. d/b/a Sprint PCS (jointly, "Sprint") and BellSouth Telecommunications, Inc. d/b/a AT&T Georgia, d/b/a AT&T Southeast ("AT&T") (the agreement shall be referred to herein as the "Sprint ICA" or Sprint agreement").

**I. Background**

**A. Nextel Petitions**

On June 21, 2007, NPCR, Inc. d/b/a Nextel Partners filed its Petition for Approval of Adoption of the Interconnection Agreement between Sprint and AT&T. On the same date, Nextel South Corp. filed an identical petition. (Both Petitions for Approval of Adoption of the Interconnection Agreement between Sprint and AT&T, shall be referred to jointly as the "Petitions").

In the Petitions, Nextel requests that the Georgia Public Service Commission ("Commission") approve its adoption of the agreement between Sprint and AT&T and require AT&T to execute the adoption agreement attached to the Petitions. (Petitions, p. 2). Nextel relies in part upon the following commitments made by AT&T, Inc. and BellSouth Corp. to the Federal Communications Commission ("FCC") in the merger of the two companies:

**Merger Commitment No. 1:**

The AT&T/ BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated that an AT&T/ BellSouth ILEC entered into in any state in the AT&T/ BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/ BellSouth ILEC shall not be



obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.

*FCC Order at 147, appendix F*

Merger Commitment No. 2:

The AT&T/ BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.

*Id. at 149, appendix F*

Nextel also points out that Section 252(i) of the Telecommunications Act of 1996 provides:

A local exchange carrier shall make available any interconnection service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunication carrier upon the same terms and conditions as those provided in the agreement.

Finally, Nextel states that, in its arbitration with Sprint, AT&T admitted:

Soon after the FCC approved Merger Commitments were publicly announced on December 29, 2006, the Parties [Sprint and AT&T] considered the impact of the Merger Commitments upon their pending Interconnection Agreement negotiations. AT&T Georgia acknowledged that, pursuant to Interconnection Merger Commitment No. 4, Sprint can extend its current Interconnection Agreement for three years. The Parties disagree, however, regarding the commencement date for such three-year extension.

B. AT&T Motion to Dismiss and, in the Alternative, Answer

On July 16, 2007, AT&T filed a Motion to Dismiss and, in the Alternative, Answer in both dockets ("Motion to Dismiss"). On July 17, 2007, AT&T filed exhibits to its Motions to Dismiss that were inadvertently omitted from the July 16 filing. AT&T argues that the Petitions should be dismissed because the Commission does not have the authority to interpret the merger conditions. AT&T asserts that the FCC stated in its order that, "[for] the avoidance of doubt, unless otherwise expressly stated to the contrary, all conditions and commitments proposed in this letter are enforceable by the FCC and would apply in the AT&T/BellSouth in-region territory, as defined herein, for a period of forty-two months from the Merger Closing Date and would automatically sunset thereafter." *FCC Order at 147, appendix F*. AT&T further argues

that Nextel did not file the Petitions within “a reasonable period of time” after the original contract is approved as required by 47 C.F.R. §51.809(c). Essentially, AT&T asserts that the agreement is expired and is therefore not available for adoption, despite the fact that AT&T and Sprint are currently operating under the agreement on a month to month basis.

C. Nextel Response to Motions to Dismiss

Nextel filed its Responses to both Motions on August 7, 2007. In response to AT&T’s suggestion that the adoption request was filed after the expiration date of the agreement, Nextel claimed that whether AT&T is correct that the Sprint agreement can only be extended to three years from the original expiration date, or, as Sprint argued, that the agreement should be extended from the date of the FCC’s merger order, the earliest possible expiration date of the Sprint Agreement would be December 31, 2007. Nextel points out that the Commission established a “bright line” test in Docket No. 18808 when it determined that an agreement with six months or more remaining in its term was suitable for adoption. Nextel filed its Petitions on June 21, 2007, which is slightly more than six months from the December 31, 2007 expiration date that Nextel alleges is the earliest possible expiration date.

D. Commission’s September 12, 2007 Order on Petitions

In its September 12, 2007 Order on Petitions, the Commission adopted Staff’s recommendation to hold the Petitions filed by NPCR, Inc. d/b/a Nextel Partners and Nextel South Corp. in abeyance until the Commission resolved the issues in the arbitration between AT&T and Sprint. The Commission adopted the Staff’s recommendation that stated as follows:

It is undisputed that AT&T and Sprint are operating under an agreement on a month to month basis. Nextel asks the Commission to approve its adoption of the agreement because there were six months remaining in the agreement as of the time of its request. However, while it is true that the agreement may be extended for three years from the expiration date of the agreement, the agreement has not yet been amended to extend the agreement. Thus, Nextel’s application of the Commission’s “bright line” test fails because the agreement has at most one month remaining at any given time in its term until it is amended by the parties. If, at the resolution of the Sprint/ AT&T arbitration, the Commission determines that the parties should extend the contract to December 31, 2007 or beyond, the Commission can approve Nextel’s request, once the Sprint contract has been amended.

(Order on Petitions, p. 3). At the August 30, 2007, Telecommunications Committee, AT&T stated that it was fully supportive of Staff’s approach to an abeyance in these dockets

E. Commission Order Granting Joint Motion in Docket No. 25064

On January 8, 2008, in Docket No. 25064, the Commission issued its Order Granting Joint Motion, in which it approved the amendment to the interconnection agreement between

AT&T and Sprint. The Joint Motion, submitted by AT&T and Sprint, stated that the amendment provides the relief requested by Sprint in its Petition, i.e., to extend the term of the Parties' existing Interconnection Agreement for a period of three (3) years from the date of Sprint's March 20, 2007 request for such extension. Given that the Commission had been holding the Nextel Petitions in abeyance until resolution of the dispute between AT&T and Sprint, Staff had placed Nextel's Petitions on the Telecommunications Committee for consideration by the Commission.

F. AT&T's Expedited Motion to Modify Telecommunications Committee Schedule and, in the Alternative, for Procedural Schedule

On January 8, 2008, in response to the Nextel Petitions being placed on the Telecommunications Committee Agenda, AT&T filed an Expedited Motion to Modify Telecommunications Committee Schedule and, in the Alternative, for Procedural Schedule ("Expedited Motion"). In its Expedited Motion, AT&T raised three arguments.

First, AT&T argued that Nextel's adoption does not comply with the merger commitments because the first merger condition only applies when a carrier is porting an agreement from one state to another. Prior to the merger condition, carriers did not have the right to port an agreement from one state to another. AT&T stated that the merger condition does not apply to Nextel's request because Nextel is not seeking to port an agreement, but instead, it is attempting to use the merger commitment to adopt the AT&T/Sprint agreement.

Second, AT&T argued that Nextel's adoption does not comply with Section 252(i). AT&T stated that the Sprint ICA addresses a unique mix of wireline and wireless items and Nextel is solely a wireless provider. Nextel cannot avail itself of all of the interconnection services and network elements provided within the Sprint agreement. The terms and conditions of the Sprint interconnection apply only when the non-ILEC parties to the agreement are providing both wireline and wireless services. Nextel does not provide both services in Georgia. Allowing Nextel to adopt the Sprint interconnection agreement would disrupt the dynamics of the terms and conditions negotiated between AT&T Georgia and the parties to the Sprint interconnection agreement, and AT&T would lose the benefits of the bargain negotiated with those parties. In addition, AT&T would not have agreed to an even split for interconnection costs for only wireless traffic.

Third, AT&T argued that granting the adoption would violate FCC rules because it would erroneously suggest that Nextel could avail itself of provisions of the interconnection agreement that apply exclusively to wireline carriers, such as the ability to purchase unbundled network elements ("UNEs") from AT&T. AT&T argued that the Commission could not order revisions to the interconnection agreement to address this issue because of the FCC's "all-or-nothing" rule, which requires a requesting carrier adopt an agreement in its entirety.<sup>1</sup> Finally, AT&T stated that, if the Commission denied its Motion to Dismiss, it was entitled to an evidentiary hearing, pursuant to 47 C.F.R. § 51.309(b), to determine whether:

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<sup>1</sup> See Second Report and Order, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 F.C.C.R. 13494 at ¶ 1 (July 13, 2004).

- (1) The costs of providing the interconnection agreement to Nextel are greater than the costs of providing it to Sprint; or
- (2) The provision of the interconnection agreement to Nextel is not technically feasible.

If AT&T were to demonstrate that either of the above propositions was the case, then it would not be obligated to make the terms of the Sprint agreement available to Nextel.

G. Nextel's Response

On January 17, 2008, Nextel filed its Response to AT&T's Expedited Motion. Nextel argued that the Commission should deny AT&T's request for a Procedural and Scheduling Order. Instead, Nextel urged the Commission to approve its adoption of the Sprint interconnection agreement. Nextel stated that the request for an evidentiary hearing was an attempt to further delay Nextel's adoption. Nextel further argued that the inclusion in AT&T's Expedited Motion of three new objections violated the Merger Conditions and the prohibition set forth in 47 C.F.R. § 51.809(a) against "unreasonable delay."

With regard to AT&T's argument that the adoption does not comply with the Merger Commitments, Nextel responded that state commissions have the authority to acknowledge a carrier's adoption rights. The fact that those rights have been enhanced by the Merger Commitments does not divest the Commission of its authority to oversee the exercise of such adoption rights. State commissions often must apply federal rules in reaching their decisions. The cooperative federalism scheme provided for in the Telecommunications Act applies to matters relating to interconnection pursuant to Sections 251 and 252 of the Act. The Commission has authority under state law to employ procedures consistent with the Act. 46-5-222(b)(3). State law also prohibits unreasonable discrimination. 46-5-164(b) and (c). The Merger Conditions expanded the adoption rights under Section 252(i), but the Commission is authorized to construe federal law in reaching its decision.

Nextel also responded to AT&T's argument that the proposed adoption would violate Section 252(i) of the Federal Act. Nextel argued that the ILECs are not permitted to limit the availability of an interconnection agreement to carriers that serve a comparable class of subscribers or provide the same service. See 47 C.F.R. § 51.809.

Finally, Nextel contends that AT&T's arguments erroneously construe the Sprint interconnection agreement to require that presence of both a wireline and wireless entity. Nextel argues that the agreement stays in full force and effect, even if one of the Sprint entities were no longer a party.

H. AT&T's Submission of Supplemental Authority

On February 8, 2008, AT&T informed the Commission that it petitioned the FCC for a determination on the issues presented in these dockets. On February 13, 2008, AT&T requested that the Commission refrain from ruling on the merits of these dockets, until after the FCC issues an order in response to its petition.

## I. Order Denying Motion to Dismiss and Procedural and Scheduling Order

On March 4, 2008, the Commission issued an Order Denying Motion to Dismiss and Procedural and Scheduling Order. First, the Commission addressed the two grounds raised in AT&T's Motion to Dismiss. The Commission adopted Staff's recommendation that it has the authority to rule on Nextel's petitions. The FCC made clear that state commissions did not lose any jurisdiction as a result of the Merger Order. State commissions have previously ruled upon requests to adopt the terms and conditions of another carrier's interconnection agreement. The Merger Conditions enhanced adoption rights, but the FCC did not demonstrate any intent to curtail state commission jurisdiction on this issue. To the contrary, the FCC expressly preserved state commission jurisdiction.

The Merger Order states that:

It is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these commitments, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these commitments.

*FCC BellSouth Merger Order* at 147, APPENDIX F. The Commission rejected AT&T's argument that the Commission lacked the authority to rule upon Nextel's petitions.

As discussed above, the second ground raised by AT&T in its Motion to Dismiss was that Nextel did not file the Petitions within "a reasonable period of time" after the original contract is approved as required by 47 C.F.R. §51.809(c). Based on Staff's recommendation, the Commission rejected this argument as well. In Docket No. 18808, the Commission established a "bright line" test that an agreement with six months or more remaining in its term was suitable for adoption. Since the original pleadings were filed in this case, AT&T and Sprint extended their agreement for three years. There can no longer be any contention that the agreement is expired. The agreement is not scheduled to expire for a period of time well in excess of the six months established as the standard by the Commission. Nextel has adopted the agreement within a reasonable time.

The Commission then addressed the arguments raised for the first time in AT&T's Expedited Motion. First, the Commission found that the Nextel adoption complied with the Merger Conditions. Merger Condition 1 states:

The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is

feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.

The Commission found that Nextel is a “requesting telecommunications carrier.” Nextel has requested the entire Sprint ICA. The Sprint ICA is an effective agreement entered into in AT&T’s 22-state ILEC operating territory. The Sprint ICA has state-specific pricing and performance plans incorporated into it for each state covered by the agreement. There is no issue of technical feasibility. The Sprint ICA has been amended to reflect changes in law. The fact that the adoption may apply to the porting of agreements does not mean that it is restricted to the porting of agreements. Nextel’s adoption complies with the Merger Condition.

In response to the remaining arguments raised in AT&T’s Expedited Motion, the Commission determined that an ILEC cannot refuse a requesting carrier’s adoption of an interconnection agreement based on the type of service the requesting provider offers; however, an ILEC can refuse the adoption if it can demonstrate that the costs of providing the agreement to the requesting carrier are greater than the costs to provide the agreement to the telecommunications carrier that originally negotiated the agreement. 47 C.F.R. 51.809(b). In accordance with this determination, the Commission scheduled an evidentiary hearing to determine whether the costs to AT&T of providing the interconnection agreement to Nextel are greater than the costs to AT&T of providing the agreement to Sprint. The Commission found that examination of this issue would require a determination as to what constitutes greater costs to the provider as contemplated by 47 C.F.R. § 51.807(b). The Commission scheduled a hearing for March 19, 2008.

Finally, the Commission denied AT&T’s request that the Commission hold this matter in abeyance until the FCC rules on AT&T’s petition regarding the issues involved in these dockets. There is no date by which the FCC must rule on AT&T’s petition. It is not fair to Nextel to hold its petitions in abeyance indefinitely.

#### J. AT&T’s Withdrawal of Request for a Hearing

On March 14, 2008, after the pre-filing of testimony, AT&T withdrew its request for a hearing in these dockets. In its request AT&T requested that the Commission reconsider its March 4, 2008 Order Denying Motion to Dismiss and Procedural and Scheduling Order, or clarify its decisions regarding AT&T’s arguments set forth in its January 8, 2008 Expedited Motion. AT&T stated that it read the Commission’s March 4, 2008 Order as “omitting a decision on all of the arguments raised” in its Expedited Motion.

In response to AT&T’s withdrawal of its request, the Commission cancelled the hearings scheduled to commence on March 19, 2008.

## II. **Staff Recommendation**

Staff recommends that the Commission grant Nextel’s adoption of the Sprint interconnection agreements for the reasons set forth below.

First, in initially placing the matter in abeyance, Staff recommended that “If, at the resolution of the Sprint/ AT&T arbitration, the Commission determines that the parties should extend the contract to December 31, 2007 or beyond, the Commission can approve Nextel’s request, once the Sprint contract has been amended.” (Order on Petitions, p. 2). At the August 30, 2008, Telecommunications Committee, AT&T stated that it fully supported Staff’s approach to an abeyance in these dockets and characterized the approach as well-reasoned. Given that Staff’s approach included approval of the adoptions should the Sprint contract be amended, AT&T’s full support of that approach indicated that AT&T would not object to the adoption under such circumstances. The Commission adopted Staff’s recommendation, and the Sprint interconnection agreement has subsequently been amended to provide for a termination date in March, 2010. In sum, under the terms of the Staff’s recommendation that was endorsed by AT&T and adopted by the Commission, the Nextel adoptions should be approved.

Second, the Commission correctly denied AT&T’s Motion to Dismiss. AT&T argued that state commissions did not have the authority to enforce conditions of the Merger, and that Nextel did not file the Petitions within “a reasonable period of time” after the original contract is approved as required by 47 C.F.R. §51.809(c). Neither of these arguments constitutes grounds for dismissal. As discussed in Section I.I. above, the Merger Order expressly preserved state commission jurisdiction.

It is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these commitments, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these commitments.

*FCC BellSouth Merger Order* at 147, APPENDIX F. The Merger Order did not strip state commissions of their authority to rule upon requests to adopt the terms and conditions of another carrier’s interconnection agreement.

AT&T’s argument that Nextel’s adoption of the Sprint ICA was not timely must be rejected in light of the amendment to the Sprint ICA and the Commission’s bright line test for the adoption of agreements set forth in Docket No. 18808. Nextel’s adoption satisfies the bright line test because there are more than six months remaining in the interconnection agreement that Nextel seeks to adopt.

Third, the objections raised in AT&T’s Expedited Motion were not raised in AT&T’s earlier pleadings in these dockets. ILECs are obligated to make agreements available in their entirety to requesting carriers without delay. 47 C.F.R. § 51.809(b). By excluding these objections from its earlier pleading, AT&T has delayed resolution of these dockets.

Fourth, the Commission correctly determined that the Nextel adoption complied with the Merger Conditions. As discussed above, there is nothing about the Nextel adoption that is in any way inconsistent with the plain language of the Merger Condition. There is no basis for AT&T’s construction of the Commission March 4, 2008 Order that the Commission did not address this

issue. The Order explains why the Nextel adoption complies with Merger Condition 1. The Order includes the following discussion:

Nextel is a “requesting telecommunications carrier.” Nextel has requested the entire Sprint ICA. The Sprint ICA is an effective agreement entered into in AT&T’s 22-state ILEC operating territory. The Sprint ICA has state-specific pricing and performance plans incorporated into it for each state covered by the agreement. There is no issue of technical feasibility. The Sprint ICA has been amended to reflect changes in law. The fact that the adoption may apply to the porting of agreements does not mean that it is restricted to the porting of agreements. Nextel’s adoption complies with the Merger commitment.

The Commission finds Staff’s recommendation reasonable. For the reasons identified by the Staff and set forth above, the Commission concludes that Nextel’s proposed adoption complies with the merger condition.

(Order Denying Motion to Dismiss and Procedural and Scheduling Order, p. 5).

Fifth, the fact that Nextel offers wireless service exclusively is not a sufficient basis upon which to refuse a request for adoption. The FCC has stated the following:

We conclude, however, that section 252(i) does not permit LECs to limit the availability of any individual interconnection, service, or network element only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement. In our view, the class of customers, or the type of service provided by a carrier, does not necessarily bear a direct relationship with the costs incurred by the LEC to interconnect with that carrier or on whether interconnection is technically feasible. Accordingly, we conclude that an interpretation of section 252(i) that attempts to limit availability by class of customer served or type of service provided would be at odds with the language and structure of the statute, which contains no such limitation.

*Local Competition Order*<sup>2</sup>, ¶ 1318. Refusal of the Nextel adoption on the grounds that it provides exclusively wireless service, while the Sprint ICA involves a mixture of wireline and wireless, would violate the terms of the Local Competition Order because it would be limiting the availability of the ICA on the grounds that Nextel did not provide the same service. Moreover, AT&T’s argument that adoption would suggest that Nextel could obtain UNEs is inconsistent

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<sup>2</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd, 15499, 16139 at ¶ 1315 (1996) (“Local Competition Order”).



with the terms of the Sprint ICA. The agreement prohibits the purchase of UNEs for the exclusive provision of wireless services. (Sprint ICA, Exhibit 1, Attachment 2, p. 3, § 1.5). Adoption of the agreement would not suggest that Nextel could obtain UNEs.

Sixth, 47 C.F.R. § 51.809(b) identifies the exceptions to the ILEC's obligation to permit adoption of an agreement. 47 C.F.R. § 51.809(a) provides for the obligation of incumbent local exchange carriers to make interconnection agreements available in their entirety to requesting carriers. 47 C.F.R. § 51.809(b) states:

(b) The obligations of paragraph (a) of this section shall not apply where the incumbent LEC proves to the state commission that:

- (1) The costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or
- (2) The provision of a particular agreement to the requesting carrier is not technically feasible.

In its Order Denying Motion to Dismiss and Procedural and Scheduling Order, the Commission scheduled evidentiary hearings for the purpose of determining whether the costs to AT&T of providing the interconnection agreement to Nextel are greater than the costs to AT&T of providing the agreement to Sprint. The Commission stated that it would be necessary to determine what constitutes greater costs to the provider as contemplated by FCC Rule 51.807(b). AT&T subsequently withdrew its request for an evidentiary hearing. In response, the Commission cancelled the hearing. There has been no showing that the costs of providing the agreement are greater.

Seventh, the Commission decision not to hold this matter in abeyance until after the FCC rules on AT&T's Petition is sound. There is no assurance that the FCC will rule upon the petition in a reasonable time. The Commission reasonably determined that it would not be fair to Nextel to hold the Petitions in abeyance for an indefinite period of time.

BEFORE THE  
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA  
DOCKET NOS. 2007-255-C, 2007-256-C  
May 27, 2008

In Re:

In the matter of:

Petition for Approval of Nextel South )  
Corp.'s Adoption of the Interconnection )  
Agreement Between Sprint )  
Communications Company L.P., Sprint )  
Spectrum L.P. d/b/a Sprint PCS And )  
BellSouth Telecommunications, Inc. )  
d/b/a AT&T South Carolina d/b/a )  
AT&T Southeast )

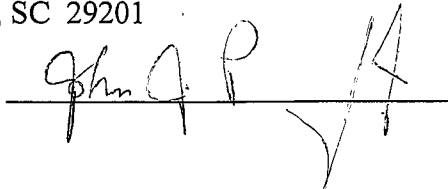
Consolidated with:

In the matter of: )  
Petition for Approval of NPCR, Inc. )  
d/b/a Nextel Partners' Adoption of the )  
Interconnection Agreement Between )  
Sprint Communications Company L.P., )  
Sprint Spectrum L.P. d/b/a Sprint PCS )  
And BellSouth Telecommunications, )  
Inc. d/b/a AT&T South Carolina d/b/a )  
AT&T Southeast )

This is to certify that I have caused to be served this day, one (1) copy of the Letter to Charles Terreni and addressed as follows:

Patrick W. Turner, Esquire  
**AT&T South Carolina**  
1600 Williams Street  
Suite 5200  
Columbia SC 29201

Nanette Edwards, Esquire  
South Carolina Office of Regulatory Staff  
1441 Main Street, Suite 300  
Columbia, SC 29201



May 27, 2008